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VOLUME XLII

FOR THE YEAR 1925

Selden Society

FOUNDED 1887

TO ENCOURAGE THE STUDY AND ADVANCE THE KNOWLEDGE OF THE HISTORY OF ENGLISH LAW.

1925

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The Year Books Series.

VOL. IX.

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Selden Society

YEAR BOOKS OF EDWARD II.

VOL. IX.

4 EDWARD II.

A.D. 1311

EDITED
FOR THE SELDEN SOCIETY
BY
G. T. TURNER, M.A.
OF LINCOLN'S INN, BARRISTER-AT-LAW

He [Serjeant Maynard] had such a relish of the old year books that he carried one in his coach to divert him in travel, and said he chose it before any comedy.
ROGER NORTH

C'est toute la tragédie, toute la comédie humaine que met en scène sous nos yeux l'histoire de nos lois. Ne craignons point de le dire et de le montrer.
ALBERT SOREL

LONDON
QUARITCH, 11 GRAFTON STREET, W
1926

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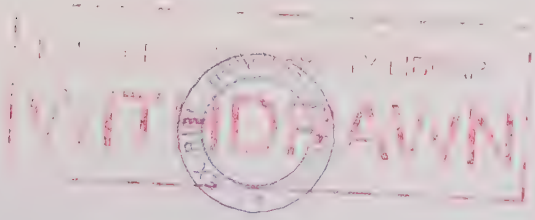

PREFACE.

Sometime before the outbreak of the Great War the Council of the Selden Society made arrangements for the publication of the Year Books of Trinity 4 Edward II and Mich. 5 Edward II under the joint editorship of the late William Martin Geldart, Vinerian Professor of Law at Oxford, and myself. Unfortunately other work and engagements during the war, and for some time afterwards, made it necessary for us to postpone the publication. Then, by the death of Professor Geldart in 1922, the Society lost the help of a great scholar and erudite lawyer, who had special qualifications for the work that he had undertaken. He had for long been interested in mediaeval law, and had critically studied the Year Books of Edward II then in print. A remarkable knowledge of mediaeval and modern languages, an accurate mind, and a great power of application would have made him a distinguished editor of mediaeval law reports. In the course of a few months he had mastered the difficulties of the palaeography of the Year Books, and at the time of his death he was ready to prepare some of his transcripts for the press. It would be difficult to exaggerate the loss which the Society has sustained by reason of his untimely death. His work, however, had been confined to the reports of Michaelmas term 5 Edward II, so that none of his transcripts have been used in this volume. The death of Professor Geldart, on whose co-operation the editor relied, and other unforeseen contingencies have caused delay in the publication of this volume for which apologies are now tendered to the subscribers.

In this volume the editor has used a manuscript Year Book of some importance which has hitherto escaped notice. It is described in the fifth section of the Introduction and in the third appendix to the text. In other sections he has developed the theory of the origin of the Year Books which was put forward in his Introduction to Volume VI. of this series. A more interesting feature of this book is the extraordinary

story of the marriage of Joan, the eight-year-old daughter of Lawrence of Bluntesdon, which is used to illustrate the Introduction. He has also discussed the development of the *nisi prius* system and the exclusive right of audience enjoyed by the Serjeants in the Common Bench. There is little to be found in our early Year Books on these subjects; but they are of great importance in legal history, and the entire lack of speeches by certain judges in the Year Books has a bearing on them which cannot be ignored.

In conclusion the Editor wishes to thank the principal Reader of Messrs. Spottiswoode, Ballantyne and Co. for his assistance. The work of a printer's Reader is multifarious, and in many cases his knowledge of the subject treated is necessarily limited; but in the preparation of this volume the Reader's assistance has extended to numerous matters of mediaeval history and language, and has been gratefully accepted.

G. J. T.

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Y = British Museum, Additional MS. 35116

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INTRODUCTION.

1. The Contents of this Volume.
2. Some of the Cases in this Volume.
3. The Year Books as Works of Instruction.
4. The relation of the MSS to one another.
5. The MSS *Z* and *ZZ*.
6. The Court and the Serjeants.
7. The Text of this Volume.

1. The Contents of this Volume.

The present volume contains the remaining reports of the fourth year of Edward II; a few reports which are attributed to that year, but are for the most part misplaced; and the whole of the abridged reports of the same year contained in the manuscript designated by the letter *Z*. These abridged reports have been collated with another MS, similar to *Z*, but hitherto overlooked, which is here designated by the letters *ZZ*. Being abridgments only, they cannot be collated with the full reports in our other manuscripts, and considered separately they are of no great value, but collectively they may throw light on more than one missing manuscript, as well as on our known manuscripts and their relation to one another. They seem to be of sufficient interest to justify the publication of the text of at least one complete year. A description of these manuscripts *Z* and *ZZ* is reserved for a later page.

The Year Books contain, as the late F. W. Maitland used to insist, a vast mass of material which illustrates the social life of the Middle Ages; they also form a valuable contribution to the history of the French language as it was formerly spoken in this country. Such material should be sought not from one volume, but from a series of many volumes; and some volumes will contain little that is of general interest. Indeed, there are those who think that more social history may be gleaned from the Latin Plea Rolls than the French Reports.[1]

[1] Mr. H. G. Richardson takes this view in an interesting article entitled 'Year Books and Plea Rolls as sources of historical information.' (Transactions of the Royal Historical Society, 1922, pp. 28–70.)

But the Plea Rolls weigh many tons, whereas all our manuscript Year Books taken together would weigh but a few pounds. Brief calendars and indices of the Plea Rolls may be constructed at no distant date; but the rolls themselves can never be printed save in selections; and the selections must necessarily be much abridged. Though these rolls rank among the foremost authorities for the history of our law, they are no substitute for our Year Books, for it is from these alone that we can learn the doctrines of the mediaeval law, and the abstruse science of mediaeval pleading; and it is in them alone that we can study the gradual but slow development of our great system of English case law. Our Year Books certainly contain much that is interesting in various branches of history and much which may be usefully noted; but it must not be forgotten that our Society was formed to encourage the study and advance the knowledge of the history of English Law.

In the reports printed in this volume there is little to arrest attention save matters of legal interest. There are no strange oaths, no scenes in Court, and few names of illustrious persons.

We may notice a case of *quare impedit*[1] concerning a church in Cumberland. A Chief Justice of the Common Bench, Sir Roger of Seyton, was one of its parsons in the reign of Edward I, and his second successor was Anthony of Bek, the famous chancellor and Bishop of Durham. There are probably few churches which have been served in so short a period by two such distinguished men as these. The patron of the living was not, as we might expect, the King, but the Countess d'Aumale and of Devon.

The Chief Justice used once again the proverbial expression[2] 'for wine and candle,' which has been explained as meaning 'for good and all,' and has been discussed in the Introduction to the third volume of this series.[3] In the manuscript from which the phrase is again printed the word 'wine' is written as 'wynd.' It is not one of our best manuscripts, and 'wynd' may be regarded as a transcriber's blunder. In another case he uses the apposite words[4] 'Drink the cup, that is, the liquor contained in the cup.'

Possibly some proverbial saying may explain an obscure passage in one of the reports[5] of *Boyvill* v. *Boyvill*. The Chief Justice, after remarking that a certain deed states that one J. purchased a term of years to him and his heirs, and that R. was the heir of J., continues with reference

[1] P. 96.

[2] P. 124.

[3] Vol. iii. p. lxix. It was explained by the editor of that volume thus: Wine and candle are the end of a day's work. A friend tells us that in Devonshire people say 'That's supper-beer and bed,' thereby meaning 'That's all over' or 'There's an end of it.'

[4] P. 170.

[5] P. 30.

to R.: *et il ne perd mie aumoigne qe la doune a ses purcelles.* These words are plainly written; but if 'purcelles' means, as might be supposed, little pigs, they are not easy to translate. As an emendation: *qe la doun (est) assez pur celles* might be suggested; but the words 'pur celles' are as difficult to explain as the single word 'purcelles,' and so it may be that the Chief Justice jocularly refers to the heirs mentioned in the gift as 'little pigs.'

There are not many cases in this volume which relate to monastic life. In *Randolf* v. *Hayles*[1] an Abbot sued for the price of eleven sacks of wool which one of his monks was alleged to have purchased in a neighbouring town for the use of his house. The monk, who is stated in the record to have been the steward of the house,[2] died and the Abbot repudiated his purchase on the ground that it was made without authority. The proceedings were adjourned with a view to a settlement, and the Abbot's defence, the nature of which we learn from the report, is not enrolled.

The discussion in this case is unusually animated; and it contains a brief but interesting reference to a former case.

> Stanton J. (to Malberthorpe). You remember well the Abbot of Selby in the old case. Sir Henry here was a party etc.
>
> *Malberthorpe.* That is true; but he took nothing etc.
>
> Stanton J. But, by God, an inquest was joined.

The Sir Henry to whom the Judge refers was his colleague, Sir Henry le Scrope. The old case is mentioned as though it were well known; but it is not to be found in the earlier reports. Perhaps some Yorkshire antiquary may yet find it on the rolls of the Court.

We also read of the deposal of an Abbot of Lenton[3] and of a Prioress of Kilburn[4]; but unfortunately nothing is said either in the reports or in the records of the offences which led to their deprivation.

In economic history the most interesting case is *The Abbot of Abingdon* v. *Bysshop.*[5] The Abbot was the lord of the vill or town[6] of Abingdon, and his commoners impounded some of his beasts *damage feasant* in his own vill. More will be said on a subsequent page of the legal aspects of this case; but attention may here be drawn to the remarks of the Chief Justice found at the end of one of the reports[7]:

> All your pleading turns on usage on one side and lordship on the other; therefore you must be at one on the usage etc. For I

[1] P. 19.

[2] He is described as 'procurator' in the record; and in the text it is said that he has an office. He was probably the cellarer of the abbey.

[3] P. 134.

[4] P. 39.

[5] P. 103.

[6] He is described in the record as 'dominus uille' (p. 112).

[7] P. 109.

> have seen in the county of Warwick that the prior of the Hospital etc. had a large meadow, and after the hay had been cut and carried away he could not depasture any kind of beasts in that meadow, any more than the most complete stranger in that country; and for all this he is lord of the meadow.

The Chief Justice was a Warwickshire man. His statement that a usage such as this obtained in his own neighbourhood should count for much in the history of rights of common.

In the case of *The Bishop of Exeter* v. *Taillur*[1] the Bishop sought to recover the wardship of certain property at Tregustick including three Cornish acres of land, a measure which has been more than once mentioned in previous volumes.[2] One of the counsel in this case asserted that three Cornish acres amounted to as much as three ploughlands in these parts. We have here a useful confirmation of the extent of a customary acre which has given rise to some difference of opinion. A ploughland was generally reputed to contain 120 acres. The same measure of land occurs in the record of *Alet* v. *Nansladron*[3] in which the plaintiffs complained of waste committed in the manor of Allet, and alleged that the tenant for life had felled as many as a thousand oaks and had exiled from the manor three tenants each of whom held half a Cornish acre of land; but in this case the acre is not identified with the ploughland.

We also read in this volume of an interesting dispute between the Bishop of Lincoln and the townsmen of Louth about the appointment of a reeve to collect his rents in that town.[4] The Bishop claimed that from time immemorial he and his predecessors had been seised of a custom by which the men of that town were wont to choose a reeve at his court held in the town on the Monday next after Michaelmas day in every year. The dispute was brought into the Common Bench at the suit of three of the townsmen by three several writs of replevin. We may gather from the reports that the grievance of the men was that they were burdened with an onerous duty without receiving any remuneration therefor; and it is interesting to note that no hint of this grievance appears upon the record of the case. The men claimed that under an agreement the reeve ought to receive half a quarter of corn every month and a robe for his services,[5] and complained that the Bishop had ceased to supply these perquisites. Two of the men denied the Bishop's seisin of the custom from time immemorial, and issue was joined on the point. One of them failed to

[1] P. 141.

[2] See vol. iii. p. 189, where also the Cornish acre is said to have contained a carucate of land.

[3] P. 150. This name has been wrongly printed as Nausladron in the text.

[4] P. 117.

[5] P. 125.

appear on the day when the jury came ; the other appeared and the jury found for the Bishop. The third townsman, who pleaded differently, relied on two interesting twelfth-century charters which are entered on the record.[1] He made default on the day given to him to hear judgment, and so the Bishop was successful on the three writs brought against him.

The case of *Boydyn* v. *Brun* probably excited great local interest, though the report[2] is brief and the record lacks detail. At a court leet held at Brinklowe, one of the manors of the earl of Lancaster, the tithingmen and other presenters presented that the plaintiff had erected a wall on the King's highway and it was awarded by the court leet that it should be pulled down. When this had been done by the defendants with the tithingmen and presenters, and the stones had been broken into pieces, as the owner alleged, he sued a writ of trespass in the Common Bench against thirteen men for the injury which had been done to him, and alleged that the wall had been erected on his own soil. Issue was joined on the allegation and the jury found for the plaintiff. We cannot but suspect from the number of the defendants and the finding of the jury in the Common Bench that there had been some abuse of the process of the court leet at Brinklowe.

In *Alet* v. *Nansladron*, which has already been mentioned, the defendant excepted to the writ that his Christian name was there given as *Serlo*, whereas his real name was *Saerius*. The Court held that both names corresponded in Latin to a single French name. Numerous illustrations could be given of these two Latin names being used as the Christian name of the same person : the first earl of Winchester, for example, was usually called in Latin *Saerius* de Quinci ; but instances can also be cited of his being called *Serlo* de Quinci.[3]

The French text in this volume is occasionally carelessly written, especially in the manuscript designated by the letter *M* ; and its interpretation is often obscure. Perhaps the most interesting word in the volume is ' awer,'[4] which bears the meaning ' doubt.' The late F. M. Nichols suggested[5] that it was derived from the Latin ' aequare ' ; but this derivation cannot be regarded as established. The phrase[6] ' vous baptizez la value ' is also noteworthy.

2. Some of the Cases in this Volume.

Three cases of some interest relating to advowsons occur in this volume. In *Bradden* v. *Hulcote*[7] an assize of last presentation and a

[1] P. 126.
[2] P. 136.
[3] *Rotuli Chartarum*, 1 Joh., p. 24.
[4] P. 193.
[5] *Britton*, vol. ii. p. 367.
[6] P. 145.
[7] P. 16.

quare impedit both concerning the same church were brought on one and the same day, the plaintiff and defendant in one suit being defendant and plaintiff respectively in the other. The Court directed that the assize should be tried and the recognitors or jurors were called. Thereupon the plaintiff counted of the presentation by his father of the clerk by whose death the church was then void, and of four previous presentations made by him in succession in the reign of Edward I. The defendant replied that one of his ancestors was seised of the advowson as of fee and of right, and in the time of King John had presented thereto a clerk who was admitted and instituted by the Bishop, and that from this ancestor the right of presenting had descended to him as heir. He further alleged that at the time when the plaintiff's father had made the last presentation his own father was within age. When pressed for an answer to the other four presentations he said that it was sufficient for him to answer the last presentation. The Court drove him to answer all the presentations made by the plaintiff's father. Then he said that each of them was made when his father was within age. Thereupon the plaintiff replied that the defendant's father was of full age at the time of the last presentation and wished to join issue on this. In spite of the objection of the defendant who asked that the plaintiff should answer his plea of his father's infancy at the date of the other four presentations, the Court directed that an inquest should be taken, as the plaintiff asked, on the age of the defendant's father at the date of the last presentation only. The jury found in favour of the plaintiff and judgment was given accordingly.

The second case was *Stanton* v. *The Prior of Monmouth*.[1] It was one of *quare impedit*, and in the course of the hearing the same question about the manner of pleading arose as in *Bradden* v. *Hulcote*. This time the plaintiff counted that his great-grandfather had been seised of a manor to which the advowson pertained, that he had presented a clerk in the time of Edward I, and that the manor and advowson had descended to him. The disturbant[2] said in his defence that his predecessor had presented the last clerk, and that other predecessors had successively presented the three parsons before the last one. Having thus made a possessory title for himself and his church he asked judgment of the writ. The plaintiff replied that at the date of the last presentation he was within age ; and he claimed that it was unnecessary to answer the other three presentations which the disturbant had alleged. Then *Scrope* said :

[1] P. 90.

[2] In writs of *quare impedit*, *warrancia carte* and a few others the person against whom the action was brought was usually styled the disturbant (*impediens*).

> We have understood that even if we had alleged ten presentations etc., it would be necessary for you to answer them all. Then we would choose on which presentation we would be at issue, for the issue is taken on the presentation of one (as was seen in Michaelmas term last).

The plaintiff was then driven to answer the other three presentations, and said that the last of them was made when his father was within age, and that the other two clerks were neither presented nor instituted. But the disturbant instead of selecting one of the four alleged presentations and traversing the plaintiff's answer thereto, as Scrope had explained, shifted his ground and attacked the title of the demandant by pleading that the clerk who (as the demandant alleged) had been presented by his great-grandfather was neither presented by him nor instituted by the Bishop on his presentation. The demandant protested that the disturbant's first plea was not, as the prior claimed, an exception to the writ, but a plea in bar of the action being ' as high and peremptory ' as his new plea to the action, and he asked judgment whether the disturbant was entitled to resort to the new plea. The Court upheld the disturbant and the question of the great-grandfather's presentation was referred to a jury which returned a verdict on the first day of the following term in favour of the demandant, who recovered the presentation and half a year's annual value of the church as damages.[1]

The original plea being merely an unsuccessful exception to the writ is not found on the record ; but it appears that the Prior's object in pleading his own title in abatement of the original writ was that if he were successful the Court might have given him a judicial writ to the Bishop directing him to admit his clerk. If he had succeeded in abating the writ without showing his own title he would have had no judicial writ and the presentation might have lapsed to the Bishop.

The words at the end of Scrope's speech—' as was seen in Michaelmas term last '—clearly refer to the case of *The Prior of Malvern* v. *Vernon*,[2] in which (as in *Bradden* v. *Hulcote*) the plaintiff brought an assize of *darain presentment* against the defendant, who brought a *quare impedit* against the plaintiff concerning the same advowson in the same term. As in *Bradden* v. *Hulcote* it was the *darain presentment* that was heard, but there is a reference to the *quare impedit* in the enrolment, whereas there was none in *Bradden* v. *Hulcote*. The Prior counted of six

[1] The damages were half a year's value, if the recovery were made within six months of the disturbance. If however the bishop had collated by reason of a lapse of six months the damages were two years' value. (Stat. Westm. II. c. 5.)

[2] *Year Book Series*, vol. iv. p. 47.

successive presentations by his predecessors, and the defendant alleged in reply that his ancestor was seised of a manor to which the advowson pertained, that he had presented a clerk before any of the six of whose presentations the plaintiff had counted, that the right to the manor had descended to him, and that his ancestor was within age at the date of the last of the six presentations. He was then driven by the Court to answer all six presentations. He pleaded in avoidance of the six, and then the plaintiff was made to hold to one of the six presentations. He chose the last, and the defendant then avoided the presentation as before and said that his ancestor was within age at the date of the presentation. The issue was put to the jurors of the assize, who found in favour of the plaintiff.

In neither *Bradden* v. *Hulcote* nor *Stanton* v. *The Prior of Monmouth* was the case of *The Prior of Malvern* v. *Vernon* expressly mentioned; for the vague reference to it (already mentioned) in one of the reports of *Stanton* v. *The Prior of Monmouth*[1] was probably the addition of the compiler. Yet a very artificial rule of pleading was followed in the three cases. If one party relied on a last presentation and several previous presentations the other party must avoid all the presentations, and then the first party must select one of the presentations and traverse the causes of avoidance. This rule was stated by the Chief Justice in *The Prior of Malvern* v. *Vernon* in Michaelmas term 4 Edward II, and though it may not have been an entirely new rule, he stated it with emphasis; and the case must have been in the minds of all those who took part in the other two cases in the following Trinity term. If it cannot be said that at this date previous decisions were binding on the Court, there are many signs that important decisions were kept in mind, and tacitly accepted as precedents.

The third case relating to advowsons was that of *Rex* v. *Hothwait*,[2] which was argued in two successive terms and is printed in this volume because its long and important record is found among the pleas of Trinity term 4 Edward II, though it occurs in all the manuscripts save one among the cases of Michaelmas term 5 Edward II. Its chief interest lies in its relation to *Courtenay* v. *Hothwait*,[3] another *quare impedit* which was brought in Michaelmas term 5 Edward II to recover the advowson for which the King brought his writ in *Rex* v. *Hothwait*. Both cases will be discussed in the next volume of this series.

In the meantime attention may be drawn to a matter which was discussed in *Rex* v. *Hothwait*. The King claimed the presentation of Brigham as the grantee of Isabel de Forz countess d'Aumale and of Devon. He counted that this lady was seised of the advowson at the

[1] *Infra*, p. 91. [2] *Infra*, p. 96. [3] *Year Book Series*, vol. xi. p. 130.

beginning of the reign of Edward I, and presented thereto in succession Roger of Seyton, Richard the son of John, and Anthony of Bek ; a fine was then levied in the Common Bench by which Robert of Yauenwith or Walter of Twinham and Isabel his wife and the heirs of Isabel on the one hand and the countess and her heirs on the other were to present alternately and successively for ever. Under this fine Robert of Yauenwith or Yanwith presented one Robert of Musgrave ; and on the death of Robert the King claimed the presentation by reason of a gift of the advowson made by the countess to Edward I. The record shows the right of the countess to make alternate presentations only, but her gift of the whole advowson must remain unexplained for the present.

The disturbant claimed on the seisin of one Waltheof of the manor and advowson of Brigham with descent from Walter to John as son and heir and from John to Alice the wife of Robert of Yanwith and Joan the wife of Thomas of Hothwait as daughters and coheiresses. A partition was made in Chancery by virtue of which presentations were to be made alternately and successively, and the husband of Alice having presented Robert of Musgrave it was now the turn of the disturbant as the grandson of Joan to present. He also excepted that the King was a strange purchaser who showed no specialty by which possession of the advowson had been transferred to him ; but he was driven by the Court to answer the three presentations by the countess. He thereupon said as regards the presentation of Anthony of Bek that he was then within age and in the wardship of the countess ; as regards that of Richard the son of John that his grandfather Thomas then held the moiety of the manor as tenant by the courtesy of the inheritance of his father ; and as regards that of Roger of Seyton that Roger was not admitted and instituted on the presentation of the countess. Nothing is said in the defence of the fine of which the King had counted, and which is printed in this volume.[1]

The case was then adjourned until Michaelmas term when the King by his attorney said that the disturbant could not claim the right of presenting because his father whose heir he was brought another *quare impedit* in 4 & 5 Edward I (*Hothwait* v. *The Countess d'Aumale*) concerning the advowson and thereon the countess recovered her presentation.

We now come to the matter with which we are specially concerned. The disturbant replied to this *quare impedit* of 4 Edw. I that in the preceding term he had excepted that the King made his title on the seisin of the countess and the feoffment made by her to the King's

[1] P. 102.

father, but had shown no specialty in support thereof. The King's attorney thereupon asked judgment whether the defendant could now be received to put forward any exception not contained in the record of the plea. On referring to the record on the rolls of the Common Bench it will be found that it contained no such exception.

The disturbant explained that he had made this exception when he pleaded in Trinity term, that when he was driven by the Court to answer the presentations of the countess he never withdrew from that exception, that in answering further he always reserved it, and that a day was given to him 'in the same state as now etc.' The King's attorney ignoring the proposed exception then tendered the record of the proceedings in the case of *Hothwait* v. *The Countess d'Aumale* brought in Mich. term 4 & 5 Edward I, which has already been mentioned; and asked judgment whether the disturbant could claim anything through Gilbert his father who had brought the writ against the countess.

The disturbant then made the following answer[1]:

> And Thomas says as before that he has no need to answer any record which the aforesaid John who sues etc. alleges until the lord king who is altogether a stranger to her the said countess show a title by some special deed of her the said countess etc. He says also that he put forward this same exception to the lord king's count heretofore as is aforesaid and from this exception he has not as yet withdrawn, but has always sought allowance etc. thereof. And that this is so he puts himself upon the record of the justices etc.
>
> And upon this William of Bereford and Hervey of Stanton justices here etc. before whom the parties aforesaid on the aforesaid quindene of St. John the Baptist heretofore pleaded, record in these words:
>
> 'And Thomas comes; and he asks that since the lord king says that the aforesaid king his father purchased the aforesaid advowson of the aforesaid countess, there may be shown on behalf of the lord king some special deed concerning the aforesaid purchase etc. And upon this no special deed is shown on behalf of the king etc.
>
> 'And Thomas said, since no deed on the part of the lord king is shown concerning the aforesaid purchase nor is it said on behalf of the king that the lord king who now is or the aforesaid king his father ever previously presented etc. to the aforesaid church whereby possession of the advowson aforesaid which is a certain gross

[1] *Year Book Series*, vol. xi. p. 139.

vested etc. in the person of either of the kings aforesaid, that he does not think that the lord king would wish to be answered on such a count. And he asks allowance etc.

'And so for this the aforesaid Thomas was told by the justices that if he wishes to have a writ to the bishop etc. in this case to say how it belongs to him the said Thomas to present etc.

'And Thomas said that he is ready to say how it belongs to him to present, but without withdrawing from his exception aforesaid, whereupon he was told by the justices that they do not quash the exception aforesaid. Let him say as much on his own behalf as may seem good to him etc.

'And Thomas saving his exception aforesaid said that it belongs to him to present for the reasons aforesaid etc.'

The whole of this pleading which the justices recorded has no place on the record of the cause in the Common Bench.

Thus it appears that a formal record was kept of the daily proceedings in Court, which could be produced afterwards for the use of the justices if it were required. Numerous pleas are to be found in every volume of our Year Books which were overruled, and nothing concerning them is to be found in the enrolments of the cases to which they relate. They formed no part of the permanent record of the cases. We can only suppose that temporary records of certain cases were preserved for a term or perhaps a few terms and then laid aside when there could be no further use for them. It is obvious that the careful enrolments which we find on our Plea Rolls could never have been made in open Court. The accuracy which distinguishes them as regards names of persons and places, the neat, unfaltering script in which the most intricate pleadings are entered, and above all the omission of unsuccessful exceptions to writs tell their own story. These permanent records were made out of Court, and we can have little doubt that they were based on temporary records such as that which was produced in the case of *Rex* v. *Hothwait*.[1]

The case of *Boyvill* v. *Boyvill*[2] is of interest not merely as being a claim for dower *certein assigné*, of which we have had no examples in our earlier volumes, but also for the intervention of a termor under the eleventh chapter of the Statute of Gloucester. The tenant to the action made default after default and then a termor intervened. He put forward an indenture by which the husband of the demandant leased the tenements to the father of the intervener to hold to him and his heirs for a term of twenty years of which nine years were still to come;

[1] It is not improbable that the record produced in this case was the Rex Roll, for which see vol. xii. pp. xi–xviii.

[2] P. 29.

and he alleged that the widow was impleading the heir collusively to deprive him of his term. The demandant objected that this chapter of the statute applied to London only.[1] When the Court held that it applied by equity throughout the realm she objected that her demand was for dower *certein assigné* assigned to her before marriage, and that consequently she brought her action 'with good right' and not by collusion. The Court however directed that the intervener should be admitted under the statute; and an inquest was awarded on the collusion, and judgment on the default was postponed. The limitation of a term of years to a man and his heirs was in accordance with the practice at this period. Another example of such a limitation may be noticed in the enrolment of *Andrew* v. *Martin* [2] printed in this volume.

In *Guldeford* v. *Selyde* [3] the proceedings were commenced by a writ of entry *cui ante diuorcium*, a somewhat uncommon variant of the writ of entry *cui in uita*. The tenant one Christine Selyde came and alleged that her late husband had devised the tenements to her for life with remainder to a man and his wife and the heirs of the body of his wife. The Court granted aid of those in remainder. The husband and wife came and asked judgment of the writ on the ground that it was brought against Christine solely whereas she held jointly with themselves. The Court refused to allow this exception, as they were called in aid to defend the tenancy and not to abate the writ. They then pleaded a feoffment with a warranty by the demandant's father whose charter they produced, and an issue of *non est factum* was joined. The refusal of the Court to allow the exception is noteworthy; but it is not mentioned in the record, and we only know of it from the report.

The case of *Bydyke* v. *The Prioress of Kilburn* [4] in point of form would appear to have been initiated by a writ of *cui in uita* under chapter 3 of the Statute of Gloucester, which enabled the son of a woman whose husband had alienated her lands during the coverture without levying a fine thereof to recover them after the death of his mother. The writ followed the form provided by the chancery:

> into which the same Prioress has not entry save after the demise which Adam of Bydyke sometime the husband of Joan of Bydyke, the demandant's mother whose heir he is, whom she in his lifetime could not gainsay, made thereof to Agnes sometime Prioress.

This form was not well suited to the facts; for the Prioress came and said that Agnes her predecessor had entered not by the demise of Adam, but by a judgment of the King's Court. Agnes, she said, had brought a writ of *cessauit per biennium* against Adam and Joan to recover the

[1] For the words of the statute, see p. 30 below. [2] P. 28. [3] P. 47. [4] P. 39.

tenements which were now in demand, and she recovered them by default. The writ of *cessauit* was brought under chapter 4 of the Statute of Gloucester, which provided that where a man let lands to fee farm, and the feoffee allowed the lands to lie fallow so that the lessor could find no distress for the space of two or more years the lessee should have an action to demand the lands in demesne. The Prioress also said that before the judgment in favour of her predecessor was made final an inquest, held under chapter 32 of the Statute of Westminster the Second to ascertain whether there had been any fraud preconcerted between the parties to the action against the form of the Statute of Mortmain, had found that Adam and Joan had held the lands from time immemorial of the Prioress until eighteen years before the purchase of the writ when they allowed the lands to lie fallow and had refused to render the services, and so her predecessor could find no distress. The inquest also found that she was not suing in preconcerted fraud against the statute. These facts were proved by the record of the proceedings which is here printed from the rolls of Trinity term of 29 Edward I.[1]

The demandant in the present action in reply to the judgment on the *cessauit* said that the entry which the Prioress had obtained by the recovery ought to be treated as a demise and that no other writ of entry could be given him in the chancery. He stated, moreover, that his writ was brought not (as its form would suggest) under chapter 3 of the Statute of Gloucester, but under chapter 3 of Statute of Westminster the Second. This chapter presents some difficulties of interpretation. As printed in the Statutes of the Realm it begins :

> In casu quando uir amisit per defaltam tenementum quod fuit ius uxoris sue durum fuit quod uxor post mortem uiri sui non habuit aliud recuperare quam per breue de recto propter quod dominus rex statuit quod mulier post mortem uiri sui habeat recuperare per breue de ingressu cui ipsa in uita sua contradicere non potuit quod in forma subscripta erit placitandum.

Now the demandant could make no claim under this part of the chapter, for it applies only to a recovery by a wife and not to one by her heir. It was on the following words of the chapter that he relied :

> Eodem modo si tenens in dotem per legem Anglie uel aliter ad terminum uite uel per donum in quo reseruatur reuersio fecerit defaltam uel reddere uoluerit admittantur heredes et illi ad quos spectat reuersio ad responsionem si uenerint ante iudicium. Et si per defaltam aut reddicionem reddatur iudicium tunc habeant heredes et illi ad quos spectat reuersio post mortem huiusmodi

[1] P. 46.

> tenencium recuperare per breue de ingressu in quo seruetur idem processus sicut dictum est supra in casu ubi uir amittit tenementa uxoris.

He claimed that his father held his mother's lands for the term of his life, and lost them by default, and that he as his mother's heir was entitled to the remedy provided by this chapter, as being the heir or a person to whom the reversion belonged. The justices doubted this interpretation. According to one report [1] we have this dialogue :

> Stanton J. Now you are a step more distant than the statute supposes.
>
> *Hengham.* It is all one reversion as regards the mother and the son.
>
> Stanton J. Is not this a writ given upon the statute and does the statute make any mention of the son?

The Court seems to have found difficulty in reconciling the two statutes. One of our reports ends with the words of the Chief Justice :

> Therefore we will be advised on our judgment ; for where a writ is brought against a man and his wife at the common law, and they lose by default, the statute works well for the wife ; but here we are in a special case for this recovery was in a *cessauit* which is given by statute.

The record shows that the case was adjourned for judgment until the following term, and then again until Easter term 5 Edward II. Nothing further is enrolled ; but one of our reports [2] says that in Hilary term 6 Edward II the tenant was told to sue a writ to have the writ of *cessauit* brought before the Court, and that he did so, by a writ out of the chancery. It may be that something further will be found concerning this case in the reports and rolls of that term.

In this case an inquest had been held under the Statute of Westminster II on the question of a collusive alienation in mortmain and it had been found that there was no collusion. The inquest was taken *ex officio* by order of the court without any writ from the Chancery. But chapter 3 of the Statute from which the two extracts have just been quoted continues immediately after the first extract as follows :

> si contra peticionem mulieris tenens excipiat quod habuit ingressum per iudicium et comperto quod per defaltam ad quod tenens necesse habet respondere si ab eo queratur tunc necesse habet ulterius *ostendere ius suum secundum formam breuis quod prius impetrauit super uirum et uxorem.*

The demandant accordingly claimed under these words, and the

[1] *Infra*, p. 42.

[2] *Infra*, p. 45.

further words in the second extract beginning ' Eodem modo ' that the prioress must show her right once again. He argued that, although the prioress had already shown her right in the inquest, that inquest had been taken for the sole purpose of showing that there had been no collusive alienation in mortmain, and that she must therefore show it again under c. 3 of the Statute of Westminster II. Unfortunately the decision of the Court on the point is not recorded.

The fact that the demandant was allowed to proceed with his action based on an entry ' by a demise,' when in fact the entry was by a judgment on a *cessauit*, shows greater elasticity of construction than we might have expected.

The Abbot of Abingdon v. *Bysshop*[1] was a case of replevin brought by the Abbot against four men for beasts taken in Brademore in the town of Abingdon. The men avowed on the ground that they and other tenants in that town had common of pasture in Brademore as appurtenant to their tenements, and pleaded that, because the Abbot had driven his beasts from his manors of Northcourt and Shippon to pasture in Brademore they took three of his beasts damage feasant there.

The Abbot replied that he was lord of the town of Abingdon, and that the defendants were his tenants of tenements to which the common was appurtenant, and therefore he was lord of the soil of Brademore, and of common right it was lawful for him to pasture that soil with his own beasts from wheresoever they might come, and to agist it with the beasts of others. He accordingly asked judgment on the ground that the defendants showed no specialty by which he was excluded from pasture there.

The defendants then acknowledged that the Abbot was lord of Abingdon, and that they were his tenants ; but they claimed to have had and used the common from time immemorial without the Abbot having pastured it until he purchased three tenements to which common was appurtenant, and that the Abbot and his predecessors had been seised since that purchase of pasturing the common with beasts levant and couchant on the purchased tenements only, and not beasts coming from elsewhere. The Abbot then tendered the averment that his predecessors were seised of pasturing their beasts in Brademore both before and after the purchases. This issue was accepted by the defendants, but the finding of the jury is unfortunately not enrolled.

The parties arrived at an issue after a long discussion in which they relied entirely on general considerations. The Chief Justice aptly summarized their arguments when he said ' All your pleadings turn on usage on one side and lordship on the other.' The Judges took little

[1] P. 103.

part in the discussion, and gave no formal decision on either lordship or usage. They merely supervised the framing of the issue. In the end the Abbot abandoned his claim to agist the common with the beasts of others, but maintained that he was seised of a right of common in Brademore which was not restricted to beasts levant and couchant in Abingdon. We can scarcely doubt that in guiding the parties to this issue the Justices said much more than appears in any of our reports. The Year Books can only record striking observations and detached speeches which tended to show the drift of the arguments. Verbatim reports were impossible in the Middle Ages.

In the enrolment of this case the word 'appendens' is not mentioned. The common which the men of Abingdon claimed is described as 'communa pertinens' to their tenements. On the other hand in the French reports of the case the words 'appendaunt' and 'appurtenaunt' seem to be used indifferently concerning their common. A few generations later common appendant and common appurtenant will bear meanings sharply distinguished from one another; and so a few remarks on these words will perhaps not be out of place here.

In the reign of Edward II and earlier we find two Latin words used with the meaning 'to pertain' or 'to belong,' namely 'spectare' and 'pertinere'; and at this date they were used indifferently, though 'pertinere' is the commoner. They were as a rule represented in our French texts by 'appendre'; but occasionally by 'regarder.'[1] Thus in the writ of *quare impedit* we have 'et ad suam spectat donacionem' etc.; and in the French reports we have in reference to this writ 'a lui appent a presenter.' The present participle of 'spectare' occurs not infrequently in the rolls and at a later date it is usually represented in French by 'regardant'; but it is not 'spectancia' but 'pertinencia' treated as a plural noun of the second declension which normally represented our modern English and old French 'appurtenances.' On the other hand, we seldom meet in the old French with other parts of the verb of which 'appurtenant' is the participle. 'Appendant' is used frequently to qualify a substantive; but, except with reference to commons, there seems to have been no clear distinction in meaning between 'appendant' and 'appurtenant.' Certainly neither the compilers of the Year Books nor the clerks who enrolled pleas in the reign of Edward II were aware of any recognised classification of commons by which common appendant was distinguished from common appurtenant.

At this point an explanation of these terms 'common appendant' and 'common appurtenant' is needed. The authors of 'The History

[1] Mr. Bolland gives several instances of the use of 'regardant' in the reports of 5 Edw. II (see vol. xi. pp. xliii, xliv). He has not, however, cited an instance of its use with reference to common.

of English Law before the time of Edward I '[1] say, with a reference to the work of the late Joshua Williams on *Rights of Common*[2] :—

> At a later time our law definitely laid down the rule that the freehold tenant of a manor is entitled to ' common appendant,' which is defined as ' the right which every freehold tenant of a manor possesses, to depasture his commonable cattle, levant and couchant on his freehold tenement anciently arable, in the wastes of the manor.' To entitle himself to this right a man merely has to show that he is a freehold tenant of the manor ; he has not to show that this right has been granted by the lord to him or to his predecessors, nor has he to show that he has gained it by long-continued use. With common appendant is contrasted ' common appurtenant.' If a man claims some right which exceeds or swerves from the definition of common appendant, then he must make a title to it by grant or prescription. Such is the case, for example, if he would turn on to the waste beasts that are not commonable—donkeys, goats, swine, or geese, if he would turn on to the waste more oxen or horses than are ' levant or couchant ' on his tenement, or if he would claim common in respect of land that is not ' ancient arable.'

But how is it that in the reign of Edward II common appendant is not found, either in the Year Books or on the Plea Rolls, contrasted with common appurtenant ? The answer to this question is probably to be found in the agrarian and economic conditions of the period. The law presumed that when a lord enfeoffed a freehold tenant of arable land within his manor he granted him also common of pasture for the beasts required to till that land. If he enfranchised a villain the new freeholder was presumed to have been granted therewith the common which he had enjoyed as a villain and for the same purpose. Thus have the lawyers explained common for oxen and horses or beasts of the plough. Cows and sheep were also commonable animals. The cultivator of the soil needed them for their produce ; he also needed them to manure his land. But cows and sheep were scarcely on the same footing as oxen and horses with regard to rights of common. Oxen and horses were essential for tilling the land, whereas cows and sheep were merely useful for its improvement. Indeed, it may be doubted whether a regular practice of manuring the arable prevailed throughout England in the thirteenth century. There were probably many manors in which there were no rights of common for cows and sheep ; there were probably many in which the pasture land and waste can have been scarcely sufficient to support the oxen and horses required for the tillage of the arable. In

[1] Pollock and Maitland, vol. i. p. 621. [2] Lecture iii. p. 31.

such manors any surcharge either by horses and oxen beyond the number allowed, or by cows and sheep, would have been a grievous burden on the commoners as a whole. Litigation relating to rights of common was inevitable in the thirteenth century, though there was perhaps more occasion for it as regards horses and oxen than cows and sheep; and so it arose chiefly with respect to those ancient rights of common which were afterwards known as common appendant. At a time when this was the sort of common which was usually in litigation there was no need for a special name to distinguish it from the common which was afterwards known as common appurtenant.

Common for donkeys, swine, goats, and geese, non-commonable animals, was of little importance in the thirteenth and fourteenth centuries or indeed at later date; and it is not surprising that we notice a lack of cases in the Year Books and on the Plea Rolls relating to common of this nature. It is not in respect of these non-commonable animals; but in respect of commonable beasts and especially sheep that litigation about common appurtenant as distinguished from common appendant became frequent at a rather later date. One reason for this was that in the fourteenth century the manorial system was decaying and demesne lands were changing hands with increasing frequency. When the lord's demesnes were divided it became necessary to make a suitable provision for the pasture of the beasts of those to whom it was alienated and the lords began to create new rights of pasture and these not necessarily on the waste lands of the manor over which the ancient freeholders enjoyed common. The other reason was that with the growth of the wool trade the rearing of sheep greatly increased, and manorial lords who were fortunate enough to possess extensive wastes were able to enrich themselves by making grants of common of pasture for sheep. As soon as claims to rights of common arising from express grant became frequent a distinction in name between common so arising and common enjoyed by reason of ancient tenure became necessary, and men began to use the terms common appendant and common appurtenant to express the distinction.

But if we find in the Year Books of Edward II that no clear distinction was made between common appendant and common appurtenant, and that the serjeants used the words appendant and appurtenant indifferently with respect to common, we ought not to assume that the distinction between the two kinds of common was non-existent. An examination of the cases relating to common seems to show that common was usually claimed by reason of tenure alone; neither express grant nor prescription being required to establish a right thereto. When a case relating to common appurtenant, as it

was afterwards called, came into court the common was described as common simply, but the pleading was different from that in which the common was common appendant.

In the case of *The Abbot of Abingdon* v. *Bysshop* the abbot claimed pasturage in Brademore with beasts from outside Abingdon by reason of lordship, and not as a commoner. Scrope replied for the commoners that the abbot had a right to pasture there solely by reason of tenements which he had purchased from the commoners, and to which common was appendant. It would appear however that though the commoners regarded their common as appendant to their tenements, they admitted that they were bound to prescribe for right to enjoy such common to the exclusion of the abbot. If the right which they claimed must be described as either common appendant or common appurtenant, it must as against the abbot be described as common appurtenant, for they could not have claimed to exclude their lord solely by reason of tenure; but there is nothing in the report which suggests that against any person save the abbot they could not have maintained a claim to their common without specialty or prescription.

In *The Bishop of Exeter* v. *Taillur*[1] the plaintiff sought to recover the wardship of certain lands which were held of him by knight's service. The defendants answered that these lands were their frank tenement; for the father of the heir long before his death granted to them by his charter three Cornish acres of land, within which the lands whereof the wardship was demanded lay, to hold in fee tail, rendering during the first eight years from the date of the charter a rose every year, and thereafter ten pounds a year. To this the Bishop replied that the feoffment was a feigned feoffment, that the heir's father had demised the lands to them for a term of eight years, and that the feoffment was made solely to secure the term at a rent exceeding the value of the land, and with the intention of depriving him of his wardship. The tenants rejoined that the feoffment was made in good faith, and not for the purpose of depriving the lord of his lordship. On this issue was joined, and a jury was thereupon summoned to come with the witnesses named in the charter on the following octave of St. Martin. After numerous adjournments, of which no particulars are entered on the Plea Roll, and more than nine years later, the issue was tried at Launceston before Sir John of Stonor, then a justice of the Common Bench, with a knight as his associate at *nisi prius*. The jury found that the father of the heir demised the lands to the defendants for a term of eight years for a certain sum, and he made the charter of feoffment already mentioned as security for the term, and so that the tenements should be redelivered

[1] P. 141.

to him at the expiration of the term. This was a verdict for the Bishop, and it was awarded that he recover the wardship together with eighty-two pounds as damages, of which the clerks of the Court were allowed five pounds.

This is the first example in the Year Books of Edward II of a chief lord recovering a wardship of lands alienated by a feigned feoffment. It may be explained that a year before his death the father of the heir wished to deprive the lord of the wardship of certain lands during the minority of his heir. He accordingly leased them to the defendants for a term of eight years in return for a sum of money. But as the lord's right of wardship would enable him to eject the lessees on the death of the father,[1] the latter enfeoffed the lessees of the property at a rent exceeding its annual value, which became payable at the expiration of the term, so that they should then redeliver it to the heir, if his father were then dead. This was a security for the term, because at common law the lord was not entitled on the death of his tenant to eject the feoffee of the tenant, and consequently he lost his wardship by reason of the feoffment. In this case the transaction was held to be a feigned feoffment under chapter 6 of the Statutes of Marlborough, which was enacted to remedy abuses of this nature.

In *The Prior of Lenton* v. *Shaldeford* [2] the prior brought a writ of trespass in the King's Bench under chapter 28 of the Statutes of Marlborough against nineteen persons to recover damages for lambs and wool taken and carried away. All the defendants except William of Shaldeford pleaded that they were not guilty. William pleaded that he was chaplain of the church of Langar and the servant of the parson and took the lambs and the wool tithed and separated in the name of the parson. Issue was joined, and a jury was summoned but its verdict is not recorded. This was a common issue in trespass; but it was reported on account of various pleas which were overruled. One of these pleas was that the writ was given by the statute to successors after the death of their predecessors, and that the prior in whose time the alleged trespass was done was still living. Now the importance of this case lies in its relation to a passage in Selden's *Dissertatio ad Fletam*,[3] which has been discussed in the Introduction to an earlier volume of this series. Selden writes as follows:

De iuris Caesarei ui seu ratione tunc adhibita, ueluti iuxta quam decisum est aut saltem decidendum tunc fuisse existimatum, egregium habes ibi

[1] Britton (ed. Nichols) ii. 8.
[2] P. 134.
[3] Recently reprinted with a translation, an interesting introduction, and useful notes by Mr. D. Ogg. For the following extract, *see* p. 148.

exemplum. Statutum habetur,[1] ' si depredationes uel rapinae fiant Abbatibus Prioribus etc. et ipsi ius suum de huiusmodi depredationibus prosequentes morte praeueniantur antequam iudicium inde fuerint assecuti, successores eorum habeant actiones ad bona ecclesiae suae de manibus huiusmodi transgressorum repetenda.' Titium priorem Walingfordiae bonis spoliauerat Seius. Dignitate priuatur Titius suffecto in eius locum Sempronio qui actione[2] hoc nomine utitur in Seium. Excipit ille, Titium adhuc esse superstitem, adeoque nec morte praeuentum iuxta statutum iam dictum, quo actio nitebatur. Sed decisum est (uti et tam tempore Edwardi primi[3] quam biennio ante in causa prioris Lantoniensis[4] itidem fuerat decisum) frustraneam esse exceptionem illam.

The exception taken in the cases of the Prior of Wallingford in 12 Edw. II, and the Prior of Lanthony in 10 Edw. II, is precisely the same as William of Shaldeford's exception in our case of the Prior of Lenton. It seems, however, improbable that the same exception should be made within a space of six years in two cases of trespass by priors of two houses bearing names so similar to one another as Lanthony and Lenton. There were two priories of Lanthony, known respectively as Lanthony Prima and Lanthony Secunda, the former being in Monmouthshire, and the latter in Gloucestershire. If the priory in the case which Selden cites was really a priory of Lanthony it was almost certainly the priory in Gloucestershire; for the Monmouthshire priory was outside the ordinary jurisdiction of the King's Bench. But we know from the Patent Rolls[5] that the prior of Lanthony by Gloucester was named John in June 1300, John Chaundos in March 1314 (7 Edw. II)[6] and John in March 1318 and February 1320 (13 Edw. II).[7] As then there seems to have been no change of priors at Lanthony in Gloucestershire shortly before 10 Edw. II, it is not improbable that the plaintiff was wrongly described as prior of Lanthony in the manuscript from which Selden cites the case, and that Lanthony is an error for Lenton. If so, the report has been misplaced in Selden's manuscript, and it is almost certainly the case of *The Prior of Lenton* v. *Shaldeford* reported in this volume.

At the end of the reports of Trinity term in *B* (the manuscript from which the old edition was printed) we have a series of paragraphs which appear in this volume as Case 38.[8] They are not found in *G*, in

[1] Stat. Marlebrig., cap. 30, 52 Hen. III (Selden's note). This chapter is numbered 28 in *The Statutes of the Realm*.

[2] Mich. 12 Ed. II, fol. 151*a*. (This is Selden's reference to the case in the manuscript Year Book to which the extract relates.)

[3] Temp. Ed. I. Fitzherb., tit. Trespas, 242 (Selden's reference). This undoubtedly refers to the case of *The Prior of Lenton* v. *Shaldeford*.

[4] Pasch. 10 Ed. II, fol. 133*b* (Selden's reference).

[5] *Calendar of Patent Rolls* (1292–1301), p. 514.

[6] *Ibidem* (1313–1317), p. 94.

[7] *Ibidem* (1317–1321), pp. 119, 423.

[8] P. 154.

which manuscript the reports otherwise agree with *B* both in text and order of cases, nor are they found in any of our other manuscripts. They also differ in character from any of the notes and short cases which have been printed in these volumes. They are clearly not intended to be formal reports of cases actually heard in Court, though they may have been suggested by real cases. Nor can they be described as brief notes stating the law on special points, for they seem to record the course of action which has been or should be taken in certain events. Some may see an air of instruction about them. Possibly they were the notes of a student; possibly they were cases stated for discussion; but whatever may have been their purpose these ten paragraphs almost certainly formed no part of the reports of this term as originally compiled.

The present volume contains thirty-one extracts[1] from Fitzherbert's Abridgement, which (with one exception) purport to relate to cases of Trinity term 4 Edw. II. After the text had gone to the press it was found that some of these cases related to the reports of the Kentish eyre of 6 Edw. II and have been misplaced by Fitzherbert. It is evident from this that the marginal references in the Abridgement must be used with caution.

The reports of Trinity term 4 Edw. II in *P* contain five cases which occur in none of the other manuscripts, and are obviously for some unexplained reason misplaced. One of them[2] has been found to be of Easter term 35 Edw. I, but the other four cannot be dated. As many of the rolls of the Common Bench of this period are not in a fit state to be inspected the identification of undated cases is often impossible. The five cases in *P* and five others from *Y*, which have been overlooked in our earlier volumes, are here printed under the title of Pleas of Various Terms.[3]

3. The Year Books as Works of Instruction.

Among other matters the Introduction to the sixth volume of this series treated of the origin and purpose of the Year Books. A few further words on this subject are now added by way of elucidation. In that Introduction it was contended that the reports circulated as pamphlets each containing the cases of a single term, or a few terms at most. Two or more of our manuscripts may contain the reports of a term or a few terms in almost exactly the same words, and with the

[1] Pp. 160–168. [2] Case 1, pp. 169-171. [3] Pp. 169–181.

cases in the same order. Plainly they were in those terms compiled from the same pamphlets. Then the correspondence ceases and the reports in the same two manuscripts will be found to differ in text and in order, and each manuscript will contain reports of cases which are not found in the other. This will be seen, for instance, in our manuscripts *B* and *G* which are in complete agreement throughout 4 Edward II, but are independent of one another in Michaelmas term of 5 Edward II. Many similar examples of agreement and then disagreement between two manuscripts might be cited.[1]

But it must not be supposed that every manuscript of our Year Books faithfully follows the smaller pamphlets, for some of them are very far from being faithful transcripts. They reveal the hand of an editor, or of successive editors. The reports, for instance, in *M* of Trinity term 4 Edward II undoubtedly agree generally with those in *B* and *G*; but differences of expression are not uncommon; and the cases are in a different order. Moreover, *M* contains several reports which *B* and *G* lack, but for the most part these additional cases are either much abridged reports or mere notes. A manuscript, such as this, may be copied not from an original pamphlet, but from an edited pamphlet; or possibly its transcriber may himself have edited some of the material which he transcribed. The manuscripts of the Year Books, as we know them, each containing a long series of reports, were on the pamphlet theory not written by reporters. They were compiled and copied from the pamphlets by professional scribes or scriveners, *scriptores litere curialis*; and they afford examples of good calligraphy and of on the whole careful, if unintelligent, transcription. Their writers appear to have been familiar with the words and expressions constantly uttered by lawyers in court, but to have lacked the knowledge required to appreciate a legal argument. Whether the scribes made these collections of reports from pamphlets which they acquired with a view to transcription at their convenience, or from pamphlets entrusted to them for transcription in accordance with special directions, we may see unmistakeable signs that the material was collected with difficulty and the work completed slowly and at intervals.

The pamphlet theory must rest primarily on the manner in which the earliest Year Books were put together; and to investigate this, a careful examination and comparison of the reports in our different manuscripts is required. We have seen that the theory is supported by the arrangement and relation to one another of the reports of the first three

[1] There is, to give another instance, complete agreement in order and text in the reports of Michaelmas, Hilary and Easter terms 4 Edward II in *D* and *T*; but this agreement ceases in Trinity term.

years of the reign of Edward II in the various manuscripts[1]; and we shall see presently that the reports of the fourth year in the same manuscripts are similarly arranged and related to one another. The theory, which might otherwise be of little interest, derives its importance from the light which it throws or may throw upon the origin and purpose of the Year Books. No conclusion that can be drawn from it is likely to be free from objection; but it is claimed that this theory goes far to establish the view of the origin and purpose of the Year Books that was taken in the Introduction to our sixth volume, and is maintained in the following pages. Various writers of distinction have held very different theories; but historical questions must be settled on their merits, and not by the citation of personal authority. It may however be observed that the pamphlet theory had not been propounded when our first Literary Director published his luminous introductions to the first three volumes of this series.

Maitland suggested that in early days the Year Books were the note-books of students and young members of the Bar. That view he expressed tentatively. It may be that he would have modified it had he lived to see the publication of more volumes of this series, and had had before him particulars of how the various manuscripts were related to one another; but in any case if the Year Books were originally mere note-books, there must have come a time when they became something more. The question arises whether they were still mere note-books in the reign of Edward II.

Let us consider these Year Books as a whole. Term after term, year after year we have reports of cases argued in the Common Bench. Here and there we may have cases from the King's Bench; but they are too few to prevent the Year Books of Edward II being regarded as Common Bench reports. We also have volumes containing reports of proceedings in eyre; but with them for the present we are not concerned. Now all these reports in the Common Bench have much the same structure and they resemble one another closely in style and arrangement. They begin with a brief statement of the cause of action, and they then recite the arguments of counsel, and the rulings of the justices on the conduct of the cases, and points of law. The actual result of litigation was evidently considered as of no great importance.[2] The reports are concerned with exceptions to writs and counts and with

[1] See the Introduction to Volume VI. of this series.

[2] 'The Year Book therefore does not give us a report directed to establish some particular point. Rather it gives us an account of the discussion which preceded the formulation by the parties and the court of that point, and the matters discussed may bear very little relation to the issue reached.' (W. S. Holdsworth, *History of English Law*, ii. 554. See also ii. 654 and v. 369, 376.)

pleas in bar of actions. They show how opposing counsel arrived at an issue under the supervision of the court, and their arguments are treated as scarcely less important than the decisions of the judges. The speeches of counsel are reported at least as fully as those of judges, which in many cases are few and far between.

So remarkable is their continuity, and the uniformity of style and arrangement of these reports, that it seems scarcely possible to doubt that they were produced under some general direction, more especially as with the exception of *Y* they disclose few, if any, traces of the individuality of their authors. Thus although the reports of Michaelmas term of 4 Edward II in *A, D, T* are derived, as will be seen presently, from one pamphlet, and those in *C, P, Q* from another, it would be difficult to say from internal evidence to which of these groups a case taken at random from one of them actually belongs.

These reports bear little resemblance to what we might expect to find in the note-books of young students of English law. We should expect greater diversity of expression, more caprice in selection, more interrogation, and more matter irrelevant to purely legal technicalities. Let us consider, for instance, Sir John Maynard's Year Book of Edward II. It is a single volume containing the reports of the twenty years of the reign, and though of little value as a text, it is a volume which may be studied conveniently. Here and there, as we turn over the pages, we find one or more short notes, which are perhaps intrusive ; and here and there a report seems to be abridged. But the volume can hardly be considered as anything but a continuous series of reports, all much of the same pattern. Many men, no doubt, were concerned in its making ; but to all appearance they wrote for others to study, and not for their self-instruction or the refreshment of their memories. But the reports in this volume look very much like those in our other manuscripts. We might even say that its reports look very much like those of two hundred years later.

The view that the Year Books were originally students' note-books is mainly based on certain brief notes which occur in one of our manuscripts, and in one manuscript only. These notes show that their author was a student who used to seek information from certain counsel and clerks of the court on various matters of law and practice, and then record what they said. Maitland has translated some of the more important of these notes in his Introduction to the third volume of this series, where they may be studied. A few others may be found on page 181 of the present volume, and the two following are typical specimens.

(1) Nota qe excepcion de bastardie ne serra james resceu en assise de novel disseisine pur ceo qe ceo est une excepcioun de dreit ; mès si

la partie die q'il entra com fiz e heir bien list a la partie dire q'il nasquit hors des esposailles ou devant les esposailles la quele excepcion serra meintenant trié par l'assise e nent maundé a la court Cristiene pur la friesche possession; issi ne serra mie en le mortdancestre pur ceo q'il touche plus pres le dreit.

W. Denham me dist qe auxi bien x aunz cest houre serreit la excepcion de bastardie resceu en assise de novele disseisine com il est ore en bref de droit.[1]

(2) Nota qe quitecleimance en la main le termer ne barre mie l'assise de novele disseisine; einz en favour du termer les justices enquerunt par assise de la quitecleimance pur salver lui sun terme e qe il ne barre nent etc. Racio est quare, Si l'assise soit porté vers le lessour e termer, si le lessour fet defaute l'assise serra agardé etc. Et sic patet quod non ualet in manu tenentis etc.[2]

But notes such as these occur frequently in one manuscript only; they are not typical of the Year Books of Edward II or indeed of any other period. This manuscript, here designated as Y, perhaps, but not certainly, the best of those containing reports of the early years of the reign, demands some special consideration, for it is very unlike any other Year Book. It differs from them in that the arrangement of its cases and notes is not chronological but topical. It differs from them still more by the larger number of notes interspersed among the reports similar in character to those printed on this page.

The names of the persons thus mentioned in these notes are Aldburn, Claver, W. Denham, Hales, Hautebere, Lancaster, Miggele, Ridenhale, Sturry, Trevaignon, Wallingford and York; and a few others which may have escaped notice. Of these Claver, W. Denham, Miggele, and York were serjeants who began to practise in the Common Bench in the first four years of the reign of Edward II, some of them perhaps a little earlier. Aldburn (if, as seems probable, Richard of Aldburgh is meant), Lancaster, Trevaignon and Wallingford are first mentioned as serjeants soon afterwards. Hales and Ridenhale are known to have been clerks of the Bench; but Sturry and Hautebere have not yet been identified. The compiler of Y obviously associated with sundry practisers of the law who were soon to become serjeants, and also with some of the experienced clerks of the Bench who were best qualified to instruct him on matters of practice and enrolment. The first of the notes printed above shows that at the time when it was written he can hardly have been frequenting the courts for more than a few years, but unfortunately the date of the note is not known, and we must remain in ignorance about his standing in the profession.

[1] Folio 21 v°. [2] Folio 35 v°.

An important feature of this manuscript is the large number of Latin records which it contains. They mostly occur in the early folios among the cases of novel disseisin and mortdancestor and are undated. Unlike most of the records in the later quires of the volume, these records at the beginning are not inserted to explain cases reported on other folios. They stand entirely by themselves. Now some of these records illustrate no special points of law and practice. Their interest lies in the subject-matter of the case or in the verdict of a jury. One of these records is printed on a later page.[1] It is that of an assize of novel disseisin brought by one Richard and his wife Joan against Fulk fitz Warin, his son Warin, and Joan the daughter of one Lawrence, to recover seisin of certain property in Wiltshire. Warin and Joan came; and Warin said that Joan the daughter of Lawrence was his wife, and the same person as she whom Richard named as his wife, and they jointly asked whether the assize ought to proceed. Richard replied that he was ready to aver that Joan was his lawful wife, and the court thereupon directed an inquiry to be made by the assize. The jurors told the following strange story. Joan's father held the property of Fulk fitz Warin by knight's service and died in his homage. Fulk gave the wardship of the lands and the marriage of Joan the heiress, then eight years of age, to his son Warin, who forthwith put her in the custody of the nuns at Burnham, and there married her. The child remained with the nuns a fortnight only. During this time Fulk had demised a manor, to which the services of the child's father had belonged, to one William; and this William thereupon claimed the wardship, abducted [2] the child and kept her in his custody for six months. William then sold the marriage of the child and the wardship of the land to a certain Ralph, the brother of the plaintiff Richard. Joan remained for half a year in the custody of Ralph who then gave her in marriage to his brother Richard, to whom he also granted the custody of the tenements. This second marriage took place in London when Joan was nine years of age; and during the three following years Richard and this child lived together as man and wife. Afterwards, while staying at Marlborough under the charge of a certain Peter, she wished to escape from her husband Richard, and she told Peter that she would like to have some young doves for dinner. Peter and she went to the dovehouse. Peter entered the house; and she, standing outside, closed the door behind him. She then escaped and 'transferred herself' to her first husband Warin, who thereupon with his father Fulk

[1] P. 196.

[2] This word adequately represents the 'abduxit et rapuit' of the Latin text. At this date the word 'rapere' conveyed no suggestion of violation.

ejected Richard from the tenements, for the recovery of which Richard had brought the assize. The parties were given a day at Westminster to hear judgment on this verdict; and then a second day. On this second day the plaintiff was non-suited.

This remarkable record illustrates neither the law nor the legal practice of the period. There may have been long arguments on points of law before the Justices appointed to take the assize in the country; or on adjournment before the Justices at Westminster who had, on account of difficulty, to give judgment on the verdict of the jurors. But there is no report of the arguments in either court; we have merely the record of the assize. The compiler of *Y* copied it, so it would seem, solely on account of its social interest; and a modern student of mediaeval history will read it on the same account. Nor is this a solitary case. One of much the same character occurs on an earlier folio of the manuscript[1]; but lack of space makes it impossible to give particulars of it in this Introduction.

These cases, few though they be, of social rather than legal interest, and the large number of notes in which the compiler of *Y* records the opinions of various members of the legal profession would—apart from the arrangement of its cases according to writs—distinguish *Y* from our other manuscripts of the Year Books. Here and there, usually in single speeches, all our manuscripts are enlivened by matter which is not strictly of legal interest; and here and there short notes occur in them which are not abridged reports; but such notes are comparatively few in number; they contain no references, as in *Y*, to the opinions of members of the legal profession; and most of them read as though they were accretions to the text, and formed no part of an original work. If we place *Y* beside any one of our other manuscripts it becomes apparent that it can be described as a note-book with much greater propriety than these others.

But if we decide to describe *Y* as a note-book, some further questions arise. Are the reports which it contains to be regarded as the work of a young law student in the Common Bench? Are they the work of a man who passed several years of his life reporting cases for his own instruction, and with no intention of publication? Can we even be sure that all the reports in this volume, or even the majority of them, were the work of its compiler? Let us remember that the

[1] Folio 21 r°. The headnote of this report is:—ubi uir absens fuit, uxore sua existente cum quodam rectore qui ex ea genuit filium; exitus cuius filii intrauit tenementa ui et armis et depulsit filium sui auunculi qui portat istam assisam etc.

Other cases of a like interest will be found on folios 14 v° and 19 r°.

cases in the early folios are many of them—perhaps as many as a third of them—the Latin records of assizes of mortdancestor and novel disseisin. They are mostly undated, and it would be a long and laborious task to date them ; but many appear to be records of assizes taken several years before the accession of Edward II. The reports also are for the most part undated ; but some of them may from internal evidence be attributed to the days when Sir John of Metingham was on the Bench. This collection of reports, notes, and records probably covers a period of not less than fifteen years. Now the records were obviously not transcribed in open court. They were copied by some person who had access to the originals in their place of deposit ; so that the compiler may fairly be described as a collector of records. Moreover, as we have seen, many of his notes report the opinions of the younger serjeants who practised in the early days of Edward II. None that have been observed report the opinions of the older serjeants who flourished in the reign of Edward I. This points, though not clearly, to the compiler having begun to frequent the Common Bench in the early years of Edward II, passing much of his time there in making notes and copying records. But if the compiler of *Y* collected copies of records he may also have collected reports. We certainly cannot assume that all the reports in *Y*, more especially the earlier reports, were the work of its compiler ; and we may suspect that he was as much a collector of reports as a reporter himself.

When the whole of this manuscript has been published, and its reports rearranged as far as possible in their chronological order, it may be possible to form some more confident opinion about the compiler of *Y*. At present we may notice that the reports of the fourth year of Edward II are numerous, and that all save a few seem to be independent of those in other manuscripts. It may be that the compiler copied the reports of this year from pamphlets of which we have no other text ; or it may be that he was himself the actual reporter of these cases, but not of all the other cases in the volume. But whether he reported cases himself or merely collected reports there can be no doubt that the reports in *Y*, both early and late, are of the same style as those in the other manuscripts. The sole peculiarity of these reports is their rearrangement according to subject-matter ; and the insertion among them of numerous notes and records. In the reign of Edward II there was a well-recognised method of reporting cases ; and the reports in *Y* were made in accordance with that method ; for they contain nothing of importance that distinguishes them from the reports in our other manuscripts.

We have then as well in *Y* as in our other manuscripts early

representatives of a long series of reports beginning in the latter part of the reign of Edward I, and continuing year by year for some two centuries with scarcely a break. We see that these reports resemble one another closely in form and arrangement. May we not reasonably suspect that some organisation was responsible for their production, for we have something before us which looks singularly unlike the result of individual enterprise ? But if our reports were not produced for citation in court—and it seems to be well established that they were not—we must seek some other purpose for this organised production. None seems more probable than that they were compiled for the instruction of those who were studying law and legal procedure. The beginner would need something more than *Bracton Britton* the *Registrum Breuium* and a few thirteenth-century tracts. The Year Books are essentially practical works ; they illuminated the whole body of law as administered in the Common Bench ; and a student who had mastered the forms of writs and the broad principles of pleading could hardly do better than study reported cases. It is significant that with the appearance of the Year Books the production of brief instructional treatises such as *Fet a saver, Hengham Magna* and *Hengham Parua* ceased, and except for Littleton's *Tenures*, new and revised versions of *Noue Narraciones* and *Breuia Placitata*, we have no new works of instruction of any importance in the fourteenth century.

The pamphlet theory then seems to lead to the idea that the earlier Year Books were not so much student's note-books as books written for the use of students. But some caution is needed about the use of this word ' student.' At the present day the members of the Inns of Court consist of students, barristers, and masters of the bench, or barristers who have been called to the governing body. In the later Middle Ages, and even in Stuart days, the word ' student ' was not the formal description of a member of an Inn of Court who had not been called to the Bar. Such persons were usually described as members or fellows of their inn. Moreover young barristers for some years after they were called took part in the exercises of their Inn ; and so the name ' student ' is not altogether appropriate as the exclusive description of the uncalled member. Nor is it certain that the words *apprenticius legis* or *ad legem* were always used to denote a member of an Inn of Court who had been called to the Bar ; for there are passages in our public records and elsewhere in which they would appear to be used vaguely with reference to any members of an Inn of Court whether called to the Bar or not, and even to members of an Inn of Chancery.[1] It is there-

[1] For example in the well-known (*Calendar of Close Rolls*, 1374–1377, entry on the Close Roll of 49 Edw. III. p. 210.)

fore necessary to add that when the Year Books are described as works for the instruction of students, the word 'student' is meant to include young barristers who were still taking part in the exercises in their Inns or Hostels.

Now if, as is here suggested, the Year Books were produced as the result of some organisation, the most natural quarter in which to look for it is the Inns of Court. We have no proof that the four Inns of Court and the old Inns of Chancery existed as early as the reign of Edward II; but Fortescue, writing a century later, described them as a legal university, and he gives no hint that they had only recently been established. There can scarcely be a doubt that barristers and students were living together in inns or hostels long before the days of Fortescue, even if none of the hostels can be identified with the existing Inns of Court; nor that legal instruction of some sort was given in those hostels. If, however, the Year Books were produced for the use of those who were studying law in the inns or hostels, it is impossible to say by whom they were compiled, or in what way they were used. Possibly the readers of the Inns themselves made the reports, as an unknown editor [1] of the eighteenth century suggested; possibly they merely superintended their production; it may even be that the organisation was not directed by the Inns but by the Judges. We have no knowledge on these points, and, as yet, nothing to guide us. All we can say is that the Year Books seem to have been produced under professional organisation for the use of students and young barristers.

Lastly, let what Sir John Prisot, Chief Justice of the Common Bench, said [2] in 1454 be read once again:

> Et, Sir, si ceo serra or adjugé nul ple come vous tenes verament ceo serra mal ensample as juvenes apprentices que sont studients en Termes, car ils ne unqes voillont doner credence a lour livres si tiel jugement que ad esté auxi moult fois ajugé en lour livres serra or ajugé le contrary etc.

His words will at least accord with the view that the Year Books or Term Books, as they were properly called, were made for the instruction of students.

It has been suggested that there is a great similarity between the earliest Year Books and the earliest printed law reports, which were undoubtedly produced by private enterprise and without organisation. But it must be remembered that we have a very large number of manuscripts of these ancient Year Books, so large indeed that the pamphlets from which they are believed to have been compiled must have enjoyed

[1] The anonymous editor of the 1738 edition of Coke's *Reports*. See *Year Book Series*, vi. p. xxiv.

[2] Year Books, 33 Henry VI, p. 41, Mich. plea 17.

a wide and active circulation. On the other hand, apart from the reports of Plowden, Dyer, Coke, and Hobart, few of importance appeared in print until the second half of the seventeenth century; and these great works bear little resemblance to our early Year Books. There are also many manuscript reports of the reigns of Elizabeth, James I, and Charles I, which have never been printed; and there were some which were not published until long after they were written. But there is no reason for supposing that these manuscript reports were frequently copied or in great request when they were first made. If such reports of the reign of Elizabeth had circulated as widely as the Year Books of Edward II, we should expect to find collections of reports of her reign by different authors bound in single volumes similar to our manuscripts of the early Year Books. Yet such collections are unknown. It may be that some of the manuscript reports of the reigns of Elizabeth, James I, and Charles I were made by young men partly for self-instruction, and with no intention of immediate publication; but the fame of Fitzherbert and Plowden must have induced imitation. The young reporter might at least hope that his work would secure publication when he had achieved a legal reputation. But the famous reports of this period were undoubtedly made by lawyers of distinction with the intention of future publication. The reports of Dyer, for instance, include the first twenty-three years of the reign of Elizabeth, during the whole of which period (save a few weeks) he was Chief Justice of the Common Bench. They were not published until three years after his death in 1582, and he probably intended to revise them. But there can scarcely be a doubt that his reports not only of the reign of Elizabeth, but also of earlier reigns before he became a judge, were compiled with a view to ultimate publication. The Year Books of Edward II were works of a very different description. They circulated, so it is submitted, year by year; and the large number of them which still exist, six centuries after they were compiled, attests their former popularity. This multiplication of our early reports appears the more remarkable when it is remembered that scarcely a manuscript can be found of the Year Books of Edward IV which were written a century and a half later. It is the wide circulation and the uniformity of style and arrangement of the Year Books of Edward II which distinguishes them from the Elizabethan reports and even the later Year Books, and has given birth to the theory that at the end of the thirteenth century an organised system of law reporting had been established for purposes of instruction.

A word may here be added on certain notes in some of our manuscripts, which, like those in Y, have been thought to reveal the personality of their authors. A typical example of such a note

occurs in the case of *Dewe* v. *Howard*, which is printed in this series among the reports of Michaelmas term 4 Edward II. It ends with these words :

> Et credo quod eadem racione ne fut qe un precipe.[1]

Now *Dewe* v. *Howard* is printed from two manuscripts *R* and *P*, which agree textually except that the whole of this note occurs in *P* only. We may reasonably assume that, like much else in *P*, this note is intrusive, and the addition of the mediaeval editor who compiled his volume from a collection of small pamphlets.

Another example of such a note occurs in the present volume in the case of *Rus* v. *The Earl of Gloucester*.[2]

> Et credo q'ele serreit resceu a cel averement non obstante dicto alterius ut patet in termino Pasche anno xix.

This note occurs as an interlineation in one only of three manuscripts containing reports of the same case, and agreeing closely with it in text. It is obviously not the work of the original reporter, but of the scribe who compiled this collection of reports, at least fifteen years after the case was heard. All such notes in which the first person singular occurs appear to be either, (like the two printed on this page,) intrusive and editorial, or to occur in manuscripts which (like *Z* and *ZZ*) contain not reports but abridgments of reports.

Our manuscript *P* contains much intrusive matter. Several of its reports of the fourth year occur in none of our other manuscripts, and the names of the judges and counsel mentioned in them show that they are misplaced reports.[3]. *P* is also remarkable in containing in its reports many references to, and even extracts from, subsequent reports. Its brief report for instance of *Bydyke* v. *The Prioress of Kilburn*, heard in Trinity term 4 Edward II, consists of five paragraphs ; which are followed by a further brief report [4] beginning :

> Et termino Hillarii anno sexto dictum fuit tenenti q'il suyt . . .

This is clearly an editorial addition taken from a report of the proceedings in Hilary term 6 Edward II. When our manuscripts of the Year Books of Edward II are stripped of all such intrusive matter they appear to contain purely impersonal reports made without comment or criticism and with little variation in style and method.

[1] Vol. iv. p. 150.

[2] P. 34. We may also notice the words ' Et mirum est ' at the end of a note on p. 26. It cannot, of course, be shown that every brief note beginning with the word ' Note ' is intrusive, especially when it is found in more than one manuscript. It can, however, be said that many of them are undoubtedly intrusive. We should expect a volume of collected reports derived from many sources to incorporate some intrusive marginalia and other accretional matter in its text.

[3] P. xxxii above.

[4] P. 45.

4. The Relation of the Manuscripts to one another.

The relation to one another of the reports of the year 4 Edward II in the various manuscripts may now be considered. It is a wearisome but necessary task for the correct understanding of the history of the Year Books, and one not easy to perform with lucidity. A similar task with regard to the reports of the first three years of the reign was attempted in our sixth volume, and it must be confessed that to follow the particulars there given requires no little patience. The editor has endeavoured in the following pages to make the particulars of the reports of the fourth year as clear as possible; but an occasional reference to the text will probably be found of assistance to the reader.

The manuscripts *A*, *D*, *T*, and *X* may conveniently be considered together so far as they relate to the fourth year. In *A* the first 30 of the 39 cases of Michaelmas term occur in the order in which they are printed. Then there comes a report of the case of *The Abbot of Hartland* v. *Beaupel*,[1] which in several manuscripts occurs among the cases of 3 Edward II, and is printed in our third volume. This is followed by eight other cases numbered in this Edition 31 to 38. In *D* and *T* these 38 cases occur in precisely the same order, except that in *D* cases 14 and 15, and also 37 and 38, are transposed, and that there is an additional case (No. 2 of Easter term) at the end of the term which is not found in *A* and *T*. They also occur in almost precisely the same words. There can be no doubt whatever that the reports in these three manuscripts are derived from one and the same source. In *X*, in which we have abridged reports only, the cases occur in the following order:

2–9, 14–16, 22, 1, 10–13, 18–21, 23–30, 32–38.

It will be noticed that 17 and 31 and *The Abbot of Hartland* v. *Beaupel* are missing; but the partial agreement in order, and the almost complete identity of the cases, show that these abridged reports are ultimately derived from the same source as *A*, *D*, and *T*.

In Hilary term the cases in *D*, *T*, and *X* follow one another in the same order except that case 2,[2] which occurs at the end of the Michaelmas reports in *D*, occurs in *X* between 34 and 43; and in *A* this order is the same as far as case 18, in the middle of which the reports end abruptly. The following is the order of the cases in *D*, *T*, and *X*:

20, 46, 38, 23, 42, *Englefeld* v. *The Earl of Oxford* (36 Easter, 3 Edward II),[3] 41, 33, 48, 18, 21, 34, 43 and 15.

[1] Vol. iii. p. 164. [2] There are no reports of case 2 in *A* and *T*. [3] Vol. iii. p. 95.

The reports of this term in *A* (so far as they go), *D*, and *T* also agree textually.

In Easter term there are eight cases in T^1 and *X*, namely :

1, 22, 8, 25, 19, 14, 10 and 5,

and these cases occur in the same order in *D*, except that *D* contains at the end the additional case 11, which appears in *C*, *Q*, and *T* in the following term as case 5. The text of these eight cases in *D* is in complete agreement with that in *T*.

So far then we have had agreement both in text and in order of cases between *D* and *T* ; and in order of cases between *D* and *T* on the one hand and the abridged reports in *X* on the other. In Trinity term, however, the agreement between *D* and *T* ceases. In *D* the cases of this term are :

26, 20, 30, 16, 37, 33, 36, 35, 18, 39 (2), 39 (3), 19, 4, 10, 29, 9,[2] 24, 21, 1, *an extra case*.[3]

In *T* they are :

26, 20, 5, 30, 16, 18, 39 (1), 28, 35, 37.

X contains abridged reports of all the cases in *T* except 16 which is omitted ; and the reports occur in the same order as in *T*.

Now four of the first five cases in *D*, namely 26, 20, 30, and 16, agree textually with those in *T*, and 5 which occurs between 20 and 30 in *T* is evidently the same case as 11 *Easter* in *D*.[4] But after case 16 the agreement between *D* and *T* ceases entirely, and 18 and 35, the only remaining cases which are common to the two manuscripts, differ textually. We may therefore infer that the reports of the fourth year in *D*, *T*, and *X* are derived from the same source for Michaelmas, Hilary, and Easter terms, and part of Trinity term ; but that the later cases of Trinity term in *D* are derived from a different source from those in *T* and *X*.

There is a further point which is worth noticing about the reports of the fourth year in these manuscripts. It will be remembered that two cases of Michaelmas term, namely 14 and 15, are transposed in *D*. Now case 13 ends about four lines before the bottom of the last folio of a quire. The scribe found that case 15 would occupy exactly four lines, and therefore took it out of order so that he might begin the next quire with a new case. Similarly extra cases are inserted at the ends

[1] In *T* the first two cases of Hilary term are repeated in error at the beginning of Easter term.

[2] This case is represented by the writ only in these MSS.

[3] This is *Russel* v. *Le Lung de la Sele*. See p. 185 below.

[4] See above on this page.

of Easter and Trinity terms so as to fill vacant spaces and begin the following terms at the tops of folios. The scribes doubtless not only made alterations in the order of cases, but also compressed reports to suit their convenience. Such alterations and compressions no doubt were sometimes made in the copies of the pamphlets from which our larger manuscripts of the Year Books are derived; but more often in the larger manuscripts themselves.

Let us now turn to *B* and *G*. In Michaelmas, Hilary, and Easter terms the reports in these manuscripts agree in order and text. The order is as follows. In Michaelmas term:

8, 36, 27, 57, 53, 9, 3, 62, 5, 10, 61, 42, 6, 63, 54, 24, *The Abbot of Hartland* v. *Beaupel* (13 Trinity, 3 Edward II),[1] 64, 30, 14, 44, 91.[2]

In Hilary term:

1, 15, 37, 9, 46, 43, 28, 44, 48, 58 (1),[3] 57.

In Easter term:

1, 52 Hilary, 13, 5, 9, 27, *Mabile* v. *The Bishop of Lincoln*[4] (30 Trinity), *Sagor* v. *atte Welle*[5] (1 Trinity), 12, 15 *Fitzherbert* (p. 164 *infra*).

In Trinity term the cases in *B* are as follows:

20, 3, 14, 19, 35, 17, 7, 11, 4, 34, 32, 8, 9, 24, 28, 2, 31, 23, 21, 22, 37, 13, 41 Michaelmas, 38.

In *G* the Trinity cases agree with *B* in order and text until case 13. In *B* this is followed by a case which is reported in several manuscripts in Michaelmas term 4 Edward II,[6] and by the series of notes which have already been described.[7] In *G*, case 13 is followed by a report of *Horkesley* v. *Power*,[8] which is also reported in *A*, *D*, *T*, and *M*, *P*, *R*, in Michaelmas term. The occurrence of these additional cases at the end of the term in two manuscripts, in which the rest of the reports agree in order and text, suggests that they may have been written on blank folios at the ends of the pamphlets from which these reports were copied.

The next group of manuscripts to be considered is *C*, *P*, *Q*. For Michaelmas term of 4 Edward II, the group consists of *C* and *P* only, for the folios containing the reports in *Q* have been lost or destroyed. In *C* the reports occur in the following order:

1, 17, 14, 3, 40, 41, 38, 5, 42, 43, 6, 7, 8, 19, 36, 35, 26, 46, 47, 48, 28, 50, 51, 52, 53, 23, 27, 57, 30, 2, 4, 9, 13, 18, 35, 11, 23, 24, 25, 28, *Hartland* v. *Beaupel* (13 Trinity, 3 Edward II), 54,

[1] Vol. iii. p. 164.

[2] This case has been wrongly numbered as 35 (vol. vi. p. 1).

[3] This is the same case as 31 *Easter* in *M* and *P*.

[4] P. 117.

[5] P. 13 below.

[6] *Le Bret* v. *Tolthorpe* (second report), vol. iv. p. 27.

[7] P. xxxi above.

[8] Vol. iv. p. 86.

and of these cases 23, 28 and 35 are reported twice. The words ' uacat in sequenti fol. 129 ' may also be noticed in the margin opposite case 30, which is more fully reported in Hilary term, 4 Edward II. This marginal note refers to the adjourned hearing in that term and was written by a later owner of the manuscript. In *P* the order of the cases is the same as in *C* as far as 28 (*second report*), but with these exceptions. Case 40 is not placed after 3, but occurs later ; case 18 and *The Abbot of Hartland* v. *Beaupel* are omitted ; and case 35 is not reported a second time. On the other hand *P* has six cases after 28, five of which are not found in *C*, namely 40, 39, 44, 45, 49 and 59[1] ; of these 39, 44 and 45 are mere notes, and 40 occurs in another version as the fifth case in *C*. The reports in both manuscripts agree in text as far as case 28, and so far they are obviously derived from the same source. We therefore have in this group of manuscripts another instance of additional matter inserted at the end of a term. This is what we might expect if the reports circulated as pamphlets ending with one or more blank folios on which additional matter might be written.

In Hilary term we once again have reports in *Q*. In that manuscript and in *C* the reports agree in text, and they occur in the following order :

> 40, 58*d*, 30, 54, 20, 46, 22, 42, 18, 19, 21, 36, 39, 1, 35, 34, 43, 23, 50, 38, 44, 52, 47, 55, 58 (*f* and *e*), *Hauterive* v. *Painel* (10 Michaelmas 4 Edward II).[2]

In *P* the cases occur in the same order as far as 52 which is followed by :

> 57, 50 (*a second report*), 33, 53, 56, 7, 32, 48, 28, 29, 49,

none of which are found in *C* and *Q*. We have therefore in this group an omission of five cases at the end of the reports in one of our manuscripts, and the substitution for them of eleven others. We can have little doubt that the first twenty-two cases which we find in *C*, *P*, and *Q* circulated as a pamphlet or as part of a pamphlet.

In Easter term there is a break in the close relationship between *C*, *P*, and *Q* ; for *P* now ceases to agree with the other two manuscripts. The order in *C* and *Q* is :

> 1, 22, 8, 25, 19, 10, 5 ;

and this as we have seen is also the order in which they occur in *D* and *T* except that case 14 is inserted in these manuscripts between 19 and

[1] This is another version of case 30 (Easter) at the beginning of the present volume.

[2] Vol. iv. p. 56.

10, and that case 11, which is the same case as 5 of the following term, occurs in *D* after case 10. It was no doubt inserted here to fill a vacant space at the foot of the first column of the folio and so enable the scribe to begin the Trinity cases at the top of a column. The reports of Easter term common to the four manuscripts *C*, *P*, *D*, and *T* agree in text.

The reports in *P* attributed to Easter term 4 Edward II are conspicuously different from those in *C* and *Q*, and several of them are obviously misplaced. They occur in the following order:

9, 1, 19, 2, 32 *infra*,[1] 58 *g*, *i*, *k* (Hilary), 23, 13, 31 *infra*,[1] 59[2] Michaelmas, 18, 21, 23, 14, 4, 26,—(4, 2, 1, 3 *various terms*)—29, 20,—(5 *various terms*)—3, 5, 10, 30 *infra*,[1] 27.

Now we have in this list eight cases which really belong to earlier terms, namely, 3, 20, and 26, though they are printed in our sixth volume,[3] and five others which are printed in this volume among 'Pleas of various terms.' Of the remainder there is not one which appears in the same version as in *C* and *Q*, or *D* and *T*. Two of them, namely 1 and 9, agree with *B*, *G*, *M* and *R*, and several of them agree with *M*. It cannot, however, be said that the Easter reports in *P* are closely related to those in any other manuscript. They contain many that are intrusive, and several of them are little more than notes. For some unexplained reason the reports of this term are scanty in all our manuscripts and probably pamphlets containing them were scarce.

In Trinity term the cases in *C* and *Q* agree in text and order. They are:

20, 5, 39 (1), 18, 28, 35.

They also agree in text with those in *T*, of which particulars have already been given,[4] except that cases 26, 30, 16 and 37, which occur in *T*, are not found in *C* and *Q*.

The cases in *P* in this term still disagree with those in *C* and *Q*. The versions of the first six of them are found in none of the other manuscripts: but the remainder agree in text and order with those in *D*.[4] The order of the first six cases is as follows:

5, 39 (14), 28, 39 (15), 17, 11, 30.

The remainder, beginning with 16, are in the same order as in *D*. It will be noticed, however, that the first three cases, namely, 26, 20, and 30, in *D* are not found in *P*.

[1] Cases 30, 31, and 32 are printed at the beginning of the present volume.

[2] This is yet another version of 59 Michaelmas and of the first case (No. 30) in the present volume. See p. xlvii, *note* 1. This version however is incomplete.

[3] Cases 3 and 20 belong to the reign of Edw. I., and 26 to 1 Edw. II.

[4] P. xlv above.

The foregoing particulars relating to *C*, *P* and *Q* make it clear that in Michaelmas and Hilary terms of this year the reports in *P* are derived from the same source as those in *C* and *Q*; that in Easter term they are not derived as a whole from the same source as any of our other reports; and that in Trinity term they are derived (except the first six cases) from the same source as *D* and not from the source of *C* and *Q*. It should be noticed particularly that it is in Trinity term that the reports in *D* cease to agree with those in *T*.

There now remain to be considered *M* and *R*. They are closely related to one another; but it will be convenient to consider them separately.

The Michaelmas reports in *M* are closely related to those in *C*, *P* and *Q*. They occur in the following order:

3, 40, *39*, 41, 38, 5, 42, 6, 7, 8, 19, 36, 35, *20*, *44*, *45*, 26, 46, 47, 48, 28, *49*, *21*, 50, 51, 52, 53, 23, *10*, 27, *56*, 54, 57, *The Abbot of Hartland* v. *Beaupel* (13 Trinity, 3 Edward II),[1] 30, *55*, *58*, *59*, 13, *60*,

of which all except those printed in italics, namely,

39, 20, 44, 45, 49, 21, 10, 56, 55, 58, 59, 60,

are found in *C*; and the following which occur in *C* are not found in *M*:

1, 2, 17, 14, 43, 4, 9, 18, 11, 24.

The twenty-eight cases which are common to the two manuscripts agree not only in text, but also as far as 57 in their order; and it may be noticed that 39, 44, 45, 49 and 59, which are not found in *C*, occur, as has already been noticed, at the end of *P*. This suggests that the compiler of *C* had before him an incomplete pamphlet in which five or more cases were wanting, possibly through the detachment of a folio.

The cases in *M* in Hilary term are:

46, 30, 54, 22, 36, 38, 33, 21, 28, 33 (*e*) Easter, 229, 49, 7, 56, 48, 57.

Of these 21, 22, 30, 36, 38, 46, 54 occur in *C* and also in *P* and *Q*; but there is no agreement, except in 30 and 54, in text between *C*, *P* and *Q* on the one hand and *M* on the other. Eight of the cases, namely 33, 28, 29, 7, 56, 48, 49 and 57, occur among the eleven additional cases at the end of *P*[3] which are not found in *C* and *Q*; and they seem to be derived from the same source.

In Easter term we have

9, 1, 19, 14, 2, 32 *infra*. 4, 13, 5, 10, 18, 30 *infra*, 23, 27, 23 Michaelmas, 21, 30 Trinity, 33 (a), 33 (b), 4, 6, 33 (c), 17, 12, 33 (d), 1 Michaelmas, 17 (Michaelmas).

[1] Vol. iii. p. 164. [2] P. 12 *infra*. [3] P. xlvii above.

It will be found on referring to the particulars of the cases of this term in *P*, that though *P* and *M* each contain reports which are missing in the other, there is some resemblance in the order of the reports and notes common to the two manuscripts and many of the reports will be found to be textually alike in them. The cases of this term common to the two manuscripts are

9, 1, 19, 2, 32, *4*, *13*, 5, 10, *18*, 30, *23*, 27, 21,

of which 4, 13, 18, 23 occur in different versions in the two manuscripts. Apparently the compiler of *M* used more than one source for his reports of this term.

In Trinity term the reports in *M* for the most part agree with those in *B* and *G*. They occur as follows :

19, 35, *39* (*4*), 1, 5, 20, 3, *39* (*5*), *39* (*16*), *39* (*6*), 14, *12*, 17, 19, *39* (*7*), 7, *39* (*8*), *15*, *39* (*9*), *29*, *26*, *39* (*10*), 11, 4, 34, *10*, 32, 8, 9, 31, 24, *39* (*11*), *39* (*12*), *39* (*13*), 28, 2, 23, 21, 22, *25*, 37.

The report of 19 occurs twice in almost the same words. It was no doubt inserted a second time by an oversight. Cases 12, 15, 25, and the notes 39 (4) to (13) and 39 (16) are found in no other manuscripts of this term ; and 10 and 26 also occur, but in another version, in *D* and *T*, and 29 occurs in *D* and *P*. The remaining cases are found in *B* and *G*, and the text is the same in the three manuscripts. The order of the cases in *B* and *G* is not very different from that in *M*, and it is clear that the cases in *M* are ultimately derived with some additions from the same source as those in *B* and *G*.

We now come to *R*, the last of our ordinary manuscripts. The cases are there arranged as follows :

11, 63, 91, 1, 17, 4, 14, 3, 39, 40, 41, 38, 5, 42, 43, 6, 7, 8, 19, 36, 35, 20, 44, 45, 26, 47, 28, 21, 50, 53, 23, 54, 10, 55, 51, 59, 27.

These cases agree in text with those which occur in *C* and *P*, and the order is not very different. Cases 2, 9, 13, 18, 24, 25, 30, 46, 48, 52, 57, which occur in *C* and *P*, are not found in *R*; and the following which occur in *R* are not found in *C*, 10, 20, 21, 39, 44, 45, 55, 59, 63, 91 [1] ; all of them, however, except 63 and 91 occur among the reports of this term in *M*. Of these ten cases, four, namely 39, 44, 45, 59, are among the additional cases at the end of *P*.

In Hilary term there is even closer agreement between the cases in *R* and those in *C* and *P* than there was in Michaelmas term. The order is precisely the same as in *C* and *P*, and also in *Q*—in which we again have reports—as far as 52, namely :

[1] See note 2, p. xlvi above.

40, 58*d*, 30, 54, 20, 46, 22, 42, 18, 21, 19, 36, 39, 1, 35, 34, 8 *abridged*, 43, 23, 50, 38, 58*b*, 58*c*, 44, 52, 13 Trinity

except that 21 and 19 appear in reversed order in *C*, *P*, and *Q*, and that the two brief notes 58*b* and 58*c* and the abridged version of 8 are inserted in this manuscript. The four cases in *C* and *Q*, and the ten in *P* which follow 52 are not found in *R*. Their place is taken by a report of *Gascelyn* v. *Rivere*, which is printed in this volume. The reports of this term in *R*, like those in *C*, *P*, and *Q*, are not derived from the same source as those in *M*.

In Easter term we have six cases only in *R*, namely :

1, 13, 5, 9, 27, and 30 Trinity.

They occur in the same order and in the same text as in *B* and *G* except that 52 Hilary is inserted after 1, and three other cases follow 30 Trinity in *B* and *G*. All these cases in *R* except 5 also occur in the same text in *M*.

Lastly, we have ten Trinity cases in *R*, all of which occur in *B*, *G* and *M*, namely—

20, 3, 35, 17, 7, 11, 34, 24, 31, 22.

These ten cases agree in text with *B*, *G* and *M*, and in order with *B* and *G* ; but it will be found that several cases in *B* and *G* are omitted in *R*.

An account of the reports in *Y* in the fourth year of Edward II cannot be attempted here. They are arranged according to their subject-matter and not in chronological order. Comparatively few of them are dated, and those cases only which can be clearly identified with dated cases in other manuscripts, or which happen to be themselves dated, have been printed in this edition. Some day this important manuscript may be edited ; but in the meantime it may be noticed of the year 4 Edward II that in Hilary term forty-two cases have been identified, namely,

3–17, 20–27, 29–34, 36–39, 41, 43, 44–46, 48, 50–52.

Now there is not one of these forty-two cases in which the text agrees with that in any other manuscript ; and few of them occur in other versions. In Easter term sixteen cases have been printed from *Y*, namely 4, 5, 7, 9, 10, 13, 14–16, 20, 23–25, 28–30. Of these 5 is the only case which agrees in text with that in any other manuscript.[1] In Trinity term we have in this volume ten cases from *Y*, namely 1, 3, 5, 6, 11, 13, 18, 20, 30, 35 ; of these 13, 18, 30, and 35 appear in the same version elsewhere. The version in *Y* of 13 agrees with that in

[1] The report of this case in *Y* agrees with those in *B*, *C*, *G*, *Q*, *R*, and *T* : but differs from those in *M* and *P*.

B and *G*, of 18 and 35 with that in *C*, *Q*, and *T*, and of 30 with *D* and *T*. The unique reports in *Y* of Michaelmas term might suggest that its compiler reported them himself; but the reports in other terms which agree with those in other manuscripts may also suggest that the compiler collected reports, and that it may be accidental that his versions of the Michaelmas reports are unique. Many conjectures are possible about this remarkable manuscript, but further research must be made before any definite conclusions about it can safely be drawn.

We may now summarize these particulars. In Michaelmas and Hilary terms the reports in *A*, *D*, and *T* are all derived from the same source. There are no reports in *A* for Easter and Hilary terms, but the reports of those terms in *D* and *T* are still derived from the same source. In Trinity term, however, *D* and *T* differ from one another except in their first four cases. The abridged reports in *X* are as regards contents and order in substantial agreement with those in *T* throughout the year.

B and *G* agree in text and order throughout the fourth year, except in the last two cases of Trinity term. The reports in *M* also agree with *B* and *G* in Trinity term; but they contain in that term five extra cases and several brief notes.

The reports in *C* and *P*—there are none in *Q*—of Michaelmas term are derived from one and the same source; but each manuscript contains some extra cases of its own at the end of the term. In Hilary term there is an agreement in text and order between *C*, *P* and *Q*, except that *P* has several extra cases in place of the last four cases in *C* and *Q*. In Easter term, however, the reports in *P* are no longer in agreement with those in *C* and *Q*, and have certain peculiarities of their own; but the reports in *C* and *Q* now agree with those in *D* and *T*. In Trinity term *C* and *Q* are still in agreement with one another; but the reports in *P* with the exception of the first six cases (which occur in the same version in no other manuscript) now agree with those in *D*.

As regards *M* the reports in that manuscript of Michaelmas term contain 27 cases which agree with other reports in *C*, *P* and *Q* in text and order, except that *M* has some additional short cases and notes interspersed among the reports. There is little agreement between the reports of Hilary term in *M* and those in *C*, *P* and *Q*, except that eight of the reports are from the same source as the additional reports at the end of those in *P*, which have already been mentioned. In Easter term the reports in *M* are still unlike those in *C* and *Q*; but there is a resemblance both in order and text in the reports which are common to *M* and *P*.

In Trinity term the reports in *M* no longer resemble those in *P*. They are now derived from the same source as those in *B* and *G*, but

there are a few additional brief reports and notes in *M* which occur in no other manuscript.

Lastly, in *R* most of the Michaelmas cases are derived from the same source as those in *C* and *P*; and most of the remainder are found in *M*. In Hilary term the reports agree generally both in order and text with those in *C*, *P* and *Q*; and in Easter and Trinity terms with those in *B* and *G*, but there are fewer reports in *R* than in either of the latter manuscripts. *R* is in this part of the reign at least a volume of selections.

These particulars seem to justify the view taken in the Introduction to our sixth volume that the existing manuscripts of our Year Books are derived from pamphlets each containing the reports of one or a few terms at most, and that these manuscripts incorporate additional notes and other matter written in the margins or at the ends of the pamphlets. The compilers, however, of our existing manuscripts felt under no obligation to follow their pamphlets slavishly. If it suited their purposes they omitted or abridged cases and they changed their order. As a rule, they seem to have used one pamphlet only for each term; but there are exceptions. The Hilary reports of 4 Edward II in *M*, for example, seem to be based on two different pamphlets. This should not surprise us; for we might expect that the methods of compilers would vary. Indeed, it is remarkable that we have so many manuscripts in which the compilers have followed their pamphlets word by word in many terms.

We may notice also that full and not abridged reports form the backbone of the pamphlets, and that the notes (which are far from numerous) are sufficiently brief to have been conveniently written in the margin of a pamphlet.

5. The Manuscripts *Z* and *ZZ*.

Since the publication of the sixth volume of this edition a manuscript of the Year Books of Edward II, which has hitherto escaped notice, has been examined. It is No. 739 in the Harleian collection at the British Museum. Consisting, so far as it relates to the reign of Edward II, of abridged reports only, it is of more importance for the general history of the Year Books than for the preparation of this edition. It closely resembles one of our manuscripts at Lincoln's Inn (here designated as *Z*), a manuscript which has been used, though sparingly, in the preparation of earlier volumes of this series; and it is with a view to enabling the reader to form a clear idea of the nature and contents of these two manuscripts and their relation to one another,

that the abridged reports for the whole of the year 4 Edward II have been printed in this volume with the chief variant readings in our new manuscript which is here designated as *ZZ*. Particulars of the foliation of this manuscript, similar to the particulars [1] of our other manuscripts printed in vol. vi, will be found in the third Appendix to this volume.

The first six folios of *ZZ* contain a few reports which appear to relate to Michaelmas term 19 Edw. II and three cases of Hilary term 19 Edw. II; and it is only with the seventh folio, the first of the second quire, that our abridged reports of the years 1 to 10 Edward II begin. A conspicuous feature of these reports [2] in *Z* and *ZZ* is that they are arranged year by year, but not term by term. *ZZ* appears never to have contained any further abridged reports; for the word 'explicit' is written after the last case of the tenth year. The abridged reports of 1 to 10 Edward II are immediately followed by four brief notes, and the Articles of the Eyre held in Northamptonshire in 3 Edward III. These are written on three folios which are clearly intrusive, being no part of the preceding or succeeding quires.

The first reports of the second part of the manuscript are of Michaelmas term 20 Edward II; and these are followed by reports of every term of the first eleven years of Edward III except Hilary and Trinity 1 Edward III, Trinity term 3 Edward III, and Michaelmas term 10 Edward III. The reports of Trinity term 10 Edward III end abruptly in the middle of a case. It may here be observed that though these abridged reports of the years 1 to 10 Edward II agree textually with those in *Z*, the reports of the reign of Edward III are usually not in textual agreement in the two manuscripts; and that some terms are reported in one manuscript but not in the other.

The importance of these manuscripts *Z* and *ZZ* lies in their showing that early in the reign of Edward III abridged reports of the first ten years of Edward II were already in circulation. Unlike the reports from which they were derived, *Z* and *ZZ* circulated not as short pamphlets each containing the reports of a term or a few terms, but as finished works based on a collection of pamphlets. Evidence of date resting solely on handwriting is certainly open to doubt; but our earliest manuscript Year Books in single volumes, such as those used in the preparation of this edition, seem to have been written soon after the accession of Edward III, and the abridged reports in *Z* and *ZZ* are little, if at all, later. This collecting of reports into single volumes (not many years after the pamphlets from which they were derived were originally written) shows that men were then beginning to study their

[1] Vol. vi. pp. xcvi–cii.

[2] The names of the cases occurring in these manuscripts are prefixed to them in italics for the reader's convenience.

Year Books as a whole; and the abridged reports which we find in *Z* and *ZZ* afford further evidence of such study. The latter contain nothing suggesting organised publication; on the contrary the frequent use of the words 'credo' and 'quere' suggests individual enterprise; but there can be little doubt that they were compiled not merely for the use of students, but for that of the legal profession generally. The form of the abridgments signifies much. As a rule they are not summaries of the speeches of counsel which constitute the chief feature of a report in the Year Books. For the most part they record either the decision of the court or the form of pleading to which one party was driven by another. They point to a growing regard for precedent, and mark a definite stage in the development of English case law.

The relation of these abridged reports in *Z* and *ZZ* to the fuller reports in other manuscripts is also a matter of interest. In the text of *Z* (printed on pp. 182 to 195) most of the abridged cases have been identified with fully reported cases in this or one of our earlier volumes, and their names have been added in italics. Unfortunately lack of space in this Introduction precludes any detailed examination of this subject which requires a consideration of the reports of several years. We may notice however that the anonymous case of covenant brought by a doweress and her second husband,[1] which occurs in *P* and *Y* only, and the case of covenant brought by the assigns of Roger Marmion,[2] which occurs in *P* only, are abridged in *Z* and *ZZ*; and that the anonymous case of formedon in reverter on p. 183 and the case of *Berenger* v. *Barton*[3] are among abridged reports of the year 4 Edward II in *Z* and *ZZ*, but occur in other manuscripts among the reports of earlier years. There are also a few abridged cases in these manuscripts which cannot be identified with any of the cases of 4 Edward II reported elsewhere. It seems then probable that at any rate in some terms these abridged reports in *Z* and *ZZ* are derived from one or more manuscripts which no longer exist or which remain to be discovered.

The order of the cases in *Z* is as follows:

38 H, 21 T, 20 E, 5 M, Anon. (*unidentified*), 56 iii. (3 Edw. II, M), 36 M, 28 M, 4 M, 24 T, *a reserved case*, 11 T, 7 M, 10 T, 23 H, 19 M, 30 H, 21 H, 18 T, 19 (various terms, 3 Edw. II), 19 H, 20 H, *three short notes*, 14 E, Anon. (*unidentified*), 23 M, 48 H, 55 H, 3 E, *two notes*, 2 (various terms and years), 39 (15) T, 57 H, 14 E, 5 T, 40 M, 4 T, 7 H, Anon. (*unidentified*), Anon. (*unidentified*) 3 (various terms and years), 1 (3 Edw. II, M), 46 H, 29 E.

[1] P. 171. [2] P. 173. [3] Vol. ii. p. 84.

Rearranged in terms, and with the omission of those cases and notes which have not been identified with cases and notes in other volumes, they are as follows :

Undated cases—

Various terms, Nos. 2 and 3 (see pp. 171 and 173 below).

Cases of Michaelmas term 3 *Edward II—*

1 and 56 iii.

Cases of 4 *Edward II—*

Michaelmas, 5, 36, 28, 4, 7, 19, 23, 40.
Hilary, 38, 23, 30, 21, 19, 20, 48, 53, 57, 7, 46.
Easter, 20, 14, 3, 29.
Trinity, 21, 24, 11, 10, 18, 39 (15), 5, 4.

The unidentified cases, which are few in number, are mostly mere notes ; and it is not improbable that some of them will be found among the reports of later terms. Though these particulars fail to disclose the source from which the compiler made his abridgments, we may suspect that one of them was a manuscript closely related to *P*.

The comments of the compiler, which have already been mentioned, are the most interesting feature of the abridgments in *Z* and *ZZ*. We frequently meet with words and phrases such as *credo, non credo, quia credo, quidam dicunt, quidam sunt in oppinione,* not only in the abridgments of this year, but also in those of other terms. There can be no doubt that they are the observations of the compiler. When, therefore, we occasionally find similar words and phrases in *M* and some of our other manuscripts we need not hesitate to assume that they are the comments of the transcriber and editor of the manuscript, and are not the work of the original reporter. If this be admitted one of the chief arguments in support of the proposition that the Year Books were students' note-books falls to the ground.

6. The Court and the Serjeants.

The judicial arrangements of the Common Bench in the reign of Edward II, and the standing of the advocates who argued there, are matters of importance in legal history. It cannot be pretended that the reports in this volume considered by themselves throw any new light on these matters ; but they tend to confirm the view taken in the Introduction to our fourth volume respecting the work of two of the judges, Trikingham and Benstede. It will be convenient to restate

briefly what was there said on this subject, for it has an important bearing on other matters with which we shall be concerned presently.

We know from the Feet of Fines that there were five judges of the Common Bench in the fourth year before whom fines were levied in open court, namely, Bereford, Trikingham, Stanton, Scrope, and Benstede; but there is nothing to show that these five judges usually sat together. Indeed the facts point to the contrary. We know that Trikingham and Benstede took no active part in the conduct of the reported cases. No speech is attributed to either of them in the reports of the fourth year. This can hardly be because they were or had been clerks who had never practised as serjeants and who might be more interested in points of process and enrolment than in matters of pleading; for Stanton had been a clerk and innumerable speeches and judgments are attributed to him in the Year Books. Trikingham himself, second of the judges in seniority, had had long judicial experience, both in the Common Bench and as a justice assigned to take assizes of novel disseisin and mortdancestor in the country. This must suggest to us that Trikingham and Benstede were not present at the hearing of our reported cases. Now in the second year of the reign a royal ordinance[1] had provided that the Common Bench should sit in two divisions or 'places'; and it therefore seems probable that Bereford, Stanton and Scrope formed one division and Trikingham and Benstede the other. If this were the fact we need an explanation of the lack of all reports of the cases heard in the second division of the court. It was suggested in the Introduction to our fourth volume that Trikingham and Benstede were continuously engaged in trying issues of fact in cases in which issue had been joined in a previous term before Bereford, Stanton and Scrope. At a time when there was no law of evidence there were no matters of law to report when the form of the issue had once been decided. This would be a sufficient reason for the Year Books containing no speeches and judgments by Trikingham and Benstede.

Let us consider briefly the practice of the early years of Edward II in these matters. The court used to direct all issues of fact to be tried in the term following that in which issue was joined; there were often however many adjournments of the trial from term to term. As a general rule the jury was summoned to Westminster and the issue was tried there; but sometimes the court directed a trial before a Justice of the Common Bench and an associate in the country by means of a writ of *nisi prius* under the provisions of the Statutes of Westminster II (c. 30) and the Statute of Fines (c. 4). But, as yet, if we

[1] *Calendar of Close Rolls*, 1307–1313, p. 231.

may judge by the plea rolls, trials at *nisi prius* appear to have been rather infrequent. An issue could only be so tried by one of the Justices of the court in which issue was joined sitting with a knight as his associate; and at the beginning of the reign of Edward II there were no regular circuits for the Justices of the two Benches; though, as we shall see presently, an effort at establishing a system was made in the fourth year. It might therefore happen that several years passed before a Justice of the Common Bench went into a county where an issue was to be tried at *nisi prius*. Thus in the cases of *Maunsel* v. *Kaylie* [1] and *The Bishop of Exeter* v. *Taillur* [2] issues were joined in the Common Bench in Trinity term 4 Edward II. In the former case the issue was tried at York in the autumn of 10 Edward II, and in the latter at Launceston in the spring of 14 Edward II. There are no other reported cases of issues joined in Trinity term 4 Edward II, and tried at *nisi prius* in the present volume,[3] but it would be easy to give numerous examples from other volumes of great delay between the joinder of issue and its trial at *nisi prius*. On account of this delay trials of issues at Westminster seem to have been more popular than trials at *nisi prius*; and there was no doubt abundant work for a separate division of the Bench for the trial of issues.

We have then three facts of importance which bear on the judicial arrangements of this period. First, that the king had declared on appointing two new judges in September 1309 that it was necessary to have two 'places' owing to the number of pleas being greater than ever. Secondly, that a large number of issues were being tried with juries at the bar of the Common Bench. Thirdly, that Trikingham and Benstede took no part in the hearing of cases reported in the Year Books. These facts seem to be sufficient to establish the session of the court in two divisions of which one was engaged in trying issues which had been joined in the other. The question of the continuance of these sessions in two divisions is material to that of the development of our *nisi prius* system; and this in turn is of importance in the history of the legal profession, more especially that of the relation to one another of barristers and serjeants. The Year Books and the Plea Rolls are almost the only sources from which we may hope to learn something of these important branches of our legal history.

[1] P. 86.

[2] P. 147.

[3] The issue in the Middlesex case of *The Prioress of Kilburn* v. *Bydyke* (p. 47 below), which was heard in the Common Bench in Trinity term 29 Edw. I, was tried at *nisi prius* at the Stone Cross in the Strand (near St. Mary's church). Middlesex assizes and issues were always tried (in accordance with the 'Statute of Justices Assigned' of 21 Edw. I) in the Common Bench at Westminster; but during part of the reign of Edward I the Common Bench sat at York, and during that period Middlesex issues were allowed to be tried at *nisi prius*.

Much misapprehension prevails about the history of the system by which the Judges used to go on circuit twice in every year. Many writers have credited Edward I with the establishment of this system; but the credit ought to be shared with his successors, Edward II and Edward III, in whose reigns the system was much developed. By chapter 30 of the Statutes of Westminster II, Edward I made provision for the taking of assizes of novel disseisin and mortdancestor at three periods of the year—namely, in January, July and September. This chapter, as it appears in the principal manuscripts and in the printed text, contains a remarkable error which has made its meaning as a whole very obscure. They make it begin with the words 'Assignentur decetero duo iusticiarii iurati coram quibus et non aliis capiantur assise'; but its subsequent clauses cannot be satisfactorily explained if two Justices only were to be appointed. Its meaning, however, becomes clearer when it is seen that 'duo' is written in error for 'certi.'[1] In accordance with this part of the chapter the country was divided into nine groups of counties; and by royal letters[2] recorded on the Close Roll (m. 4*d*) and dated 23 August 1285 four Justices were appointed for each of seven of these groups, and three for each of the remaining two. The names of each of the Justices of the two Benches appear in some one of these groups; but in four of the groups no Justice of either Bench was appointed. One of the three periods during which the assizes were to be taken was from the Feast of the Epiphany till the Feast of the Purification, and this included the whole of Hilary term, during which the Justices of the two Benches were obviously unable to be in the country. The other two periods were in the summer vacation: one was from 8 July to 1 August, the other from 14 September till 6 October, when the term began at Westminster—the interval of six weeks between the two periods being for the harvest. Chapter 30 of the Statute of Westminster also provided, by a new writ of *nisi prius*, for issues being tried in the country by Justices of that Bench from which they originated. The writ stated that a jury was to come to Westminster at a certain day unless before that day a certain named Justice should come into the county from which the jury was to be summoned. Thus the Statute of Westminster II provided the writ

[1] This remarkable textual error in the Statute has hitherto escaped notice. The following words in the 'Statute of Justices Assigned' of 21 Edw. I can leave us in no doubt about the true reading:—

> Cum dominus rex nuper in ultimis statutis suis Westmonasterii precepisset quod in singulis comitatibus *certi* Iusticiarii assignarentur.

The words also show that the Statute of *Quia Emptores* of 18 Edw. I was not yet known as the Statute of Westminster III at this period.

[2] *Calendar of Close Rolls*, 1279–1288, p. 365. In these letters the words used in the recital of the statute are 'certi iusticiarii' not 'duo iusticiarii.'

of *nisi prius*, but made no provision for the Justices of the Benches trying issues thereunder at regular intervals.

In 21 Edward I it was considered that chapter 30 of the Statute of Westminster II was working badly. The periods during which the assizes could be taken under the Statute were too brief for the hearing of all the assizes of mortdancestor and novel disseisin for which writs had been purchased. Accordingly a new statute was enacted which provided that the country should be divided into four circuits, to each of which two auxiliary Justices were assigned to take assizes throughout the year. Middlesex assizes juries and inquests were to be taken in the Common Bench. The names of the eight Justices first appointed under this statute are entered on the Close Roll (m. 7*d*) of 21 Edward I; but the appointments of their successors are seldom enrolled. They were auxiliary Justices only, and had no power to try issues at *nisi prius*. The new statute was intended to facilitate the hearing of assizes as early as possible, and was not concerned with the trial of issues generally. The Justices of the two Benches, however, still continued to try issues at *nisi prius* during the vacations, when one of their number came into the county from which an issue originated; but they had no regular circuits.

In 27 Edward I the Statute of Fines directed that the auxiliary Justices appointed under the Statute of 21 Edward I should also deliver the gaols of a county as soon as they had taken the assizes; and the same statute directed that trials of issues were to be taken in the vacations before a Justice of the court in which the issue was joined with a knight as his associate unless the inquisition required great examination; but still no provision was made for the regular visitation of the counties for this purpose by the Justices of the Benches.

The visitation of the counties by pairs of auxiliary Justices for the purpose of taking assizes and delivering gaols seems to have been maintained with some regularity until the fourth year of Edward II, the year with which this volume is specially concerned. At the beginning of this year the country was divided into seven circuits, and three Justices, of whom two were to form a quorum, were assigned to take assizes and deliver gaols in each circuit. The names of the Justices will be found on the Close Roll (m. 19*d*).[1] In three of the circuits one of the three Justices was a Justice of the Bench; but in the remaining four they were all serjeants or king's clerks. Several of the Justices—namely, Bereford, Brabazon, Trikingham, Roubery and Benstede—were not assigned to take assizes this year. It should also be noticed

[1] *Calendar of Close Rolls*, 1307–1313, p. 336.

that this important reform was effected without the authority of a statute.

From this date it was usual for a Justice of one of the two Benches to be named among the Justices assigned to take assizes and deliver gaols in the different counties. The circuits were not fixed, and the sessions were irregular, so that litigants often had to wait for a long while for trials at *nisi prius*. It was not until the year 14 Edward III that a remedy was found for these delays. In that year a statute[1] provided that an issue might be tried at *nisi prius* before a Justice of *either* Bench, or before the Chief Baron of the Exchequer if he were a man of law. The statute also provided that if neither a Justice of the Bench nor the Chief Baron should come into the county an issue might be tried before the Justices assigned to take assizes in that county, provided that one of these Justices was a Justice of the Bench or a serjeant. There is some obscurity of language in this enactment. Apparently it was intended that a writ of *nisi prius* should issue as theretofore with the name of a single Justice therein, as provided by the Statute of Westminster II; but that, if that Justice should fail to come, then another writ of *nisi prius* might issue, and the inquest be taken before the Justices assigned to take the next assizes in the county. Further research is needed on the interpretation of the new statute; but there seems to be evidence that after 14 Edward III the writs of *nisi prius* were usually directed in the first instance to be taken not before a single named Justice, but before the unnamed Justices assigned to take assizes in the county.

Soon after the passing of this Act it became the established practice for the King's Justices to go on circuit twice a year with commissions of assize, gaol delivery, oyer and terminer and the peace; and while on circuit they tried issues at *nisi prius*. The circuit system, which has lasted with little alteration till the present day, dates from the statute of 14 Edward III. For many years the only issues of fact which were tried at Westminster were in Middlesex cases and a few others of exceptional importance. But in Tudor times litigants used to bring a great number of actions, which were really country actions, in Middlesex for speediness of trial, so hindering demurrers at the bars of the court. To remedy this hindrance an Act was passed in 18 Eliz. which enabled the Chief Justice of either Bench or two puisne Justices to try Middlesex issues as Justices of *nisi prius* for the county of Middlesex within the term or within four days of the end thereof. Now if it required an Act of Parliament to enable a Chief Justice or two puisne Justices to try issues *within the term*, it may seem to be obvious

[1] 14 Edw. III., Stat. i. c. 16.

that such issues could, before the Act was passed, be tried by the full Bench only; and therefore Trikingham and Benstede cannot have tried issues by themselves in the reign of Edward II. But it must be remembered that Edward II had directed that there should be two divisions of the Common Bench; and that until the end of the reign of Henry VI there were at least five Justices of that Bench, so that two divisions could always be made. After the accession of Edward IV the number of the Judges was reduced, and each court usually had a Chief Justice and three puisne Justices only.[1] From that date two divisions could be less conveniently made. Moreover, as the number of trials of issues at Westminster had necessarily been much reduced by the alteration in the *nisi prius* system in the reign of Edward III, there would have been little work for a second division until the practice arose of treating country actions as Middlesex actions. The Act of 18 Eliz. was necessary to enable the court to try issues after the term; and to authorise the court to sit as a *nisi prius* court and use a *nisi prius* record. As regards the sessions in the term it may merely have confirmed a practice which had fallen into disuse.[2] This is another matter which requires further investigation; but it is clear that the history of the *nisi prius* system reveals nothing which discredits the view that in the reign of Edward II the issues were usually tried in the Common Bench and not at *nisi prius*, and that the court sat in two divisions, one of which was chiefly concerned with the trial of issues which had been joined in the other division.

We may now turn to the serjeants and the bar. In the nineteenth century the serjeants claimed as from time immemorial an exclusive right of audience in the Common Bench in term time, though they admitted the right of the barristers to argue there at *nisi prius* both during the term and after the term. They explained this by saying that cases in the Bench at *nisi prius* were of the same character as country cases, and that the Judges heard them not as Justices of the Bench, but as Justices at *nisi prius*. But, as we have already seen, issues were usually tried in the reign of Edward II in the Common Bench, and not at *nisi prius* in the country; and there is at least a probability that barristers were allowed to represent their clients at the trial of issues in the Bench as well as in the country at *nisi prius*, even though the trial

[1] In the reign of Edward VI this had become the recognised number of judges of each of the common law courts.

[2] Or possibly the Act enabled an issue to be tried by a Chief Justice without a puisne justice, and that it merely confirmed an existing practice as regards the trial before two of the puisne justices. The ordinance of September 1309 had enabled the justices to sit in two divisions; and this must have been sufficient authority for the session of two puisne justices for the trial of an issue in the Common Bench.

in the Bench took place during the term. The serjeant's privilege seems to have related to his duties rather than to the court in which he performed them. He was a *narrator* or counter whose business it was to address the court in certain prescribed forms, and to plead and reply to exceptions to the action or the writ. On the other hand, the advocate at the trial of an issue was concerned not with the law but with the facts. He addressed the jury not the Judge. The trial took place in some term subsequent to that in which issue was joined; and in some respects it might almost be regarded as another case. The trial called for none of the special learning of the serjeant-at-law; and it is obvious that the interests of the parties to the trial of an issue in the Bench could have been as efficiently protected by other members of the legal profession as they were at the trial of an issue at *nisi prius* in the country.

Various entries on the plea rolls tend to confirm this view. Consider, for instance, the following extract from the Common Bench plea rolls [1] of Easter term 22 Edward I:

Thomas de Assheby ualletus Hugonis de Branteston (allocutus per iusticiarios hic de eo quod idem Thomas in presencia iusticiariorum hic quendam magistrum Antonium de Bradele uerbis reprobis et uilibus affecit in contemptu curie regis prout idem Antonius questus fuit etc.) uenit et bene defendit quod ipse nulla uerba reproba ei dixit in contemptum curie etc. Et hoc petit quod inquiratur etc.

Et postea Henricus le Bret et alii iuratores presentes hic in curia qui factum predictum uiderunt et uerba audierunt etc. dicunt super sacramentum suum quod cum predictus Hugo de Branteston stetisset hic ad barram ad placitandum cum quodam aduersario suo etc. predictus magister Antonius ueniens retro ipsum Hugonem et uolens predictam barram appropinquare posuit manum suam super predictum Hugonem et predictus Thomas hoc perpendens dixit predicto Antonio hec uerba:—'Depone manum tuum [2] de domino meo.' Et statim idem Antonius respondit 'Tu me derides.' Et postea post pusillum predictus Thomas iterato dixit eidem Antonio hec uerba: 'Dimitte ipse [2] stare in pace'; cui idem Antonius tunc respondit: 'Tu me derides.' Et postea idem Antonius in recedendo a barra dixit predicto Thome: 'Tu me derisisti et alias audies inde loqui'; cui predictus Thomas respondit: 'Loquar tecum apud Neugate si uolueris uel alibi ubi uolueris.' Et dicunt quod nulla alia uerba contumeliosa dixit etc.

Postea Robertus Malet et predictus Hugo manuceperunt predictum Thomam habendi eum hic ad uoluntatem iusticiariorum;

which may be translated thus:

Thomas of Assheby, yeoman of Hugh of Branteston, (addressed by the Justices here on this, that the same Thomas in the presence of the Justices here attacked a certain Master Anthony of Bradele with opprobrious and

[1] De Banco Rolls, No. 104, r. 75*d*. [2] *Sic*.

vile words in contempt of the court of the King, as the same Anthony complained etc.,) came and well he denied that he spoke any opprobrious words in contempt of the court etc. And he asks that an inquest be made of this etc.

And afterwards Henry le Bret and other jurors present here in court who saw the deed aforesaid and heard the words etc. say upon their oath that when the aforesaid Hugh of Branteston stood here at the bar to plead with a certain man his adversary etc., the aforesaid Master Anthony coming behind him the said Hugh and wishing to draw near to the aforesaid bar put his hand upon the aforesaid Hugh, and the aforesaid Thomas, thinking over this, said to the aforesaid Anthony these words, 'Take thine hand from my master.' And forthwith the same Anthony answered, 'Thou insultest me.' And afterwards after a pause the aforesaid Thomas again said to the same Anthony these words, 'Let him stay in peace'; and the same Anthony then answered, 'Thou insultest me.' And afterwards the same Anthony, on withdrawing from the bar, said to the aforesaid Thomas, 'Thou hast insulted me, and thou shalt hear speech thereof another time'; and the aforesaid Thomas answered, 'I will speak with thee at Newgate if thou wilt, or elsewhere if thou wilt.' And they say that he spoke no other insulting words.

Afterwards Robert Malet and the aforesaid Hugh became mainpernors for having the aforesaid Thomas here at the will of the Justices.

This Hugh of Branteston is stated to have been pleading at the bar when Master Anthony laid his hand upon him, and as a jury was present the incident must have occurred on the trial of an issue. We know little of Hugh of Branteston beyond the fact that he was more than once appointed a Justice to deliver gaols.[1] His name is not to be found in any of the lists of 'narratores' which the editor of this volume has constructed for the years 22–33 Edward I, and he was almost certainly not a serjeant. The role of Master Anthony of Bradele in this matter is obscure. He may have been an attorney, or counsel for the adversary against whom Hugh was pleading. If, however, he were a counsel he also was not a serjeant, for his name is not in our list of 'narratores,' and he is described as Master, whereas there is reason for thinking that serjeants at this date were never clerks.

In the same term we have another reference to an advocate who was not a serjeant, but was retained in the Common Bench.[2] A certain Master Thomas Cantok sued a writ of annuity against Master Robert of Wyche to recover twelve marks as the arrears of an annual rent of two pounds issuing from Master Robert's chamber for the service which he had rendered and was to render to this Master Robert. The

[1] He was appointed to deliver the gaols of Oxford, Warwick, and Reading in the year 1293. See *Calendar of Patent Rolls* (1292–1301), pp. 39, 40, 56. He died shortly before 11 July 1299. See *Calendar of Close Rolls* (1296–1302), p. 256.

[2] De Banco Rolls, No. 104, r. 82. The enrolment of this case is printed on p. 199 below.

defendant answered that, when he was impleaded in the Common Bench by one William of Dover, parson of Doderhill, the plaintiff refused to be of his counsel in the plea, and asked judgment in the present action accordingly. To this Thomas replied that he was of the counsel of Robert in this plea; but when Robert produced a writing of acquittance it was challenged as spurious on account of an erasure in a suspicious place; and, since the falseness of the document concerned the King as well as the other party, he could not as a person in the King's service be of Robert's counsel. Robert rejoined that Thomas refused to be of his counsel both before the plea began and afterwards. On this issue was joined, and a year later the jury returned a verdict in favour of the plaintiff, who recovered the arrears of his annuity with damages.

Now we cannot infer from the record[1] that Thomas was in court ready to speak on behalf of his client, for both parties agreed that Thomas was asked to be of Robert's counsel, and that Thomas refused, but nothing is said about Thomas addressing the court. Moreover, the jury merely found that Thomas was ready to assist Robert with counsel and aid, and in fact assisted him until a certain event. But it is difficult to believe that Master Thomas of Cantok received an annuity of forty shillings a year in return for standing by his client and prompting him. He was a man of distinction who became Chancellor of Ireland very soon after these proceedings and died as Bishop of Emly. He can have been scarcely less important in the legal profession than some of the younger serjeants. But no ordinary litigant would prefer the services of a clerk to those of a serjeant, however eminent that clerk might be, if he could not address a jury. Moreover we must remember that Robert of Wyche, the defendant in this action, though he may have acquired some landed property by descent or purchase, was a clerk, and as a clerk probably stood in greater need of professional aid in personal than in real or mixed actions. Exceptions to writs of annuity and debt were far less common than in actions for the recovery of land, and we may suppose that the joinder of issue in such cases was often a merely formal matter, and that it was when the issue was joined and a jury summoned that the services of an advocate were urgently needed.

This case of *Cantok* v. *Wyche* certainly cannot be cited as proof that a barrister or any other advocate who was not a serjeant had a right of audience at some particular stage of an action; but it becomes more intelligible if it be supposed that the serjeant's exclusive right of audience was limited to pleas and exceptions before the joinder of issue. There

[1] P. 199 *infra*.

are numerous cases on the plea rolls relating to annuities payable to lawyers for their services, and it is not improbable that a careful collation of them would elucidate this difficult but interesting matter.

There is no evidence that barristers had the right to appear in the Common Bench in assizes of novel disseisin and mortdancestor relating to land in Middlesex, which could be heard in that court only; but it is possible that they enjoyed this right seeing that they appeared in assizes relating to land in other counties. On the rolls of Hilary term 4 Richard II there is an interesting case relating to the conduct of one Nicholas Herring, who is there described as 'apprenticius,' in conducting an assize of novel disseisin in Kent.[1]

Our knowledge of the names of the serjeants who were practising in the Common Bench in the reign of Edward II is derived partly from the Year Books and partly from the Plea Rolls; but it is from the latter source only that we can obtain their Christian names. Term by term we can compile from the rolls lists of the serjeants who were instructed to levy fines in the Bench; the entry of the payment of the king's silver for licence to agree being always followed at this period by the words 'Et habent cyrographum per A. B. narratorem.' Some of the names on these lists appear, as might be expected, with great frequency; others very rarely; and it is remarkable that there is much variety in their spelling. Precise statistics would be out of place in this Introduction, and they could only be compiled with great labour. We may notice, however, that the names of some serjeants who had large practices in the Common Bench may be entirely missing from the Plea Rolls, or may occur there but two or three times at the most, in a single term. In Trinity term 4 Edw. II, for instance, the names of Gilbert of Toutheby and William of Denham are missing, and those of Walter of Friskeney and Robert of Malberthorpe each occur once only. Similarly in the preceding term the names of Gilbert of Toutheby, Walter of Friskeney, and William of Denham are missing, and that of Robert of Malberthorpe occurs three times only. In that term also the names of John of Denham, Robert of Hedon, and William of Herle are missing on the Plea Rolls; yet their names occur frequently in the reports. In general, however, the frequency with which a serjeant's name appears on the Plea Rolls is some indication of the extent of his practice in the Common Bench. Possibly the leading serjeants when overburdened with work declined to undertake such small business as that relating to the levying of fines.

We may here notice an altogether exceptional entry relating to the payment of the king's silver for licences to agree which occurs on the Plea Rolls of 4 Edw. II. On roll 226 of Michaelmas term we find a

[1] De Banco Rolls (Hil. 4 Ric. II), No. 481, r. 102, London.

payment of king's silver recorded in the usual form but expressed to be made 'per W. de Bereford narratorem suum.'[1] The Christian name of one serjeant may sometimes have been attributed by a clerical error to another with the same surname, especially if they both had large practices in the Common Bench; but no such explanation is possible concerning William of Bereford; and the appearance of the Chief Justice performing the work of a serjeant practising at the Bar must remain unexplained for the present.

There are many instances at this period of either father and son or two of a family practising as serjeants in the Common Bench. We have two representatives of each of the following names: Asshele, Burton, Denham, Kingeshemede, Lond' (probably standing for London), Prilly, and Scrope. We may suspect that the law was then in some respects a close profession.

We have already remarked on the appearance in the reports of the names of three judges only. There are, however, indications on the Plea Rolls of the activity of the other two judges in matters of process. We find that various orders are recorded on the rolls as having been made by a single justice. In the record, for instance, of the case of *The Bishop of Lincoln* v. *Mabile* it is stated that a day was given to one of the defendants and the bishop by Lambert of Trikingham.[2] A detailed analysis of these entries has not been made, and no doubt the results would vary from term to term. An examination of most of the rolls of Trinity term 4 Edw. II shows that nine orders are ascribed on them to the Chief Justice (of which three relate to a single case) and six orders to Sir Henry le Scrope. Both these judges, it will be remembered, were laymen. When we count the orders on these same rolls made by Hervy of Stanton, Lambert of Trikingham, and John of Benstede, we find no fewer than thirty-five orders ascribed to Stanton, seventeen to Trikingham, and twelve to Benstede. It would also appear from the records in other terms that the relative activity of the justices of the Common Bench was much the same. Stanton's activity in this respect is the more remarkable as there were few reported cases in which he took no part in the discussion.

The earlier professional career of the clerical justices still remains obscure. We cannot find that Trikingham, Stanton, or Roubery ever held any definite clerical appointments before they were raised to the Bench. It seems not unlikely that there was a special class of king's clerks who were engaged in the king's service generally. They acted as attorneys for him in his legal business, and enjoyed special privileges in his courts. They appear to have had a right of audience

[1] *De Banco Rolls*, No. 183, r. 226. [2] P. 129.

at the trial of issues in the Common Bench and at *nisi prius*, but to have had no such right in the Common Bench or before justices in eyre. Master Thomas of Cantok,[1] of whom we have already spoken, and Adam of Brom[2] were clerks of this description. They may have been clerical members of the Bar; but if so, it should be observed that though they were qualified for appointment as justices of the two Benches, none of them ever became serjeants. At present, however, it is impossible to speak with any confidence on this subject on which much further research is needed.

In the reign of Edward II there already existed a class of professional attorneys, specially authorised by the court to act for their clients in each action at law. Their appointments are recorded on the last few rolls of the courts; and they are usually mentioned by name in the records of proceedings. It is not, however, easy to distinguish the professional attorney from the private attorney—that is to say, the person who was authorised to sue on behalf of his wife, an infant, or some other person under disability; but the appearance of the same attorneys in a large number of suits term after term shows that they practised professionally. The various clerks of the court and perhaps those members of the bar who had not yet become serjeants were qualified to act as attorneys. There are also cases in which a serjeant is named as attorney; but he may in those cases have been acting for persons under disability by leave of the court. It seems to be certain that the serjeants never made a practice of acting as attorneys.

7. The Text of this Volume.

In this volume the editor has followed the procedure, as regards spelling and accents, which was adopted in the first four volumes of this series. The French words are written as they are spelt in the manuscripts, except that the letters *i* and *j*, *u*, *v*, and *w*, capital letters and marks of punctuation are printed in accordance with modern usage. Accents are also used in past participles and a few other cases to distinguish an accented from an unaccented *e*. It is unnecessary to add anything in justification of this procedure to what has been said in the Introduction to the first volume. In some minor respects, however, this procedure has not been followed. Words which end in one manuscript with *es* and in another with *etz* or *ets* are here made to end with *es*, though Maitland would have made them end in *és*. This and a few other slight differences of procedure are due not to a difference of principle, but to an oversight; and the correction of the words affected by it seemed to be unnecessary after the text had gone to the press.

[1] P. 201. [2] Vol. vi. p. 179.

Some criticism has been made of the use of the headings in large type at the beginning of the reports of each term. It may, therefore, be explained that these headings are not found in our manuscripts, and have been added in Latin for the convenience of the reader. They are adapted from the headings in the Plea Rolls of the Common Bench.

In the reports themselves one version is printed from each group of manuscripts which contains the particular case and, as far as possible, the more important variants in the other manuscripts of the group are printed in footnotes. Where two manuscripts agree very closely, as *B* and *G* in Trinity term 4 Edward II, the footnotes are few, and attention can conveniently be drawn to comparatively small variations; but where a manuscript has many differences of reading from the rest of the same group, selection becomes necessary, and only important variations can be noted. Such selection must be capricious, and probably any editor would annotate his text somewhat differently on a second effort.

The translation of the text follows the original as closely as possible; but it must be confessed that there are many passages which seem to be obscurely expressed, and are not easily explained in a footnote. In the case, for instance, of *The Prior of Lenton* v. *Shaldeford*[1] there is an important speech by Roubery, a justice of the King's Bench, who says that where a writ is brought against an abbot and the abbot is deposed while the plea is pending the writ will not abate; but that it is otherwise where the abbot brings the writ. Then he continues: 'Now William is deposed and every kind of action is extinct. Therefore this man must be answered.' The text seems to be accurate as regards the writ not abating; for there was no abatement in the case of *Bydyke* v. *The Prioress of Kilburn*,[2] in this volume, where the prioress against whom the writ was brought had been deposed. The words 'but it is otherwise where the abbot brings the writ' would seem to mean that such a writ would abate at common law; but that this writ was not brought at common law, but under Chapter 28 of the Statutes of Marlborough which expressly gave a remedy to the deposed abbot's successor.

Though many passages in our Year Books remain obscure, our series receives much attention from historical students. Year by year we find more and more references to them in works of erudition; for example no one who has ever studied Mr. T. F. Plucknett's valuable book on *The Statutes and their Interpretation in the first half of the fourteenth century* can doubt the utility of the series.

[1] P. 134 *infra*. [2] P. 39 *infra*.

LEGAL CALENDAR

FOR THE

FOURTH YEAR OF KING EDWARD II.

The fourth year of the reign began on 8 July 1310. The Sunday letter was D for 1310 and C for 1311. In 1311 Easter Day fell on 11 April.

Justices of the King's Bench.

Roger le Brabazon, C.J.; Gilbert of Roubery; Henry Spigurnel.

Justices of the Common Bench.

William of Bereford, C.J.; Lambert of Trikingham; Hervy of Stanton John of Benstede; Henry le Scrope.

Names of Counsel who are mentioned in the Reports of Trinity Term, 4 Edw. II. in this Volume.

Bingham, William of
Cambridge, Cantebrigge, John of
Claver, John
Denham, Denom, John of
Denham, Denom, William of
Friskeney, Walter of
Hedon, Robert of
Hengham *or* Ingham, John of
Herle, William of
Huntingdon, Ralph of
Ingham, *see* Hengham
Kingeshemede, Simon of
Laufare, Nicholas of
Malberthorpe, Robert of
Miggeley, William of
Passeley, Edmund
Roston, William of
Scrope, Geoffrey le
Stonore, John of
Toudeby *or* Toutheby, Gilbert of
Westcote, John of
Willoughby, Richard of

Of these William of Bingham, William of Denham and Gilbert of Toudeby are not mentioned on the Plea Rolls of this term.

And the following are mentioned on the Plea Rolls only:—

Asshele, Robert of
Botiller, John of
Esthall, Robert of
Goldington, William of
Hambury, Henry of
Hampton, Richard of
Loveday, John
Russel, Robert

It is uncertain whether the name 'Denom' or 'Denham' standing by itself in the Reports represents John or William of Denham. In the second version of case 7 (p. 30) the name is preceded by the initial J.

THE YEAR BOOKS OF EDWARD II.

VOL. IX.

FOURTH YEAR.

PLACITA DE TERMINO PASCHE ANNO REGNI REGIS EDWARDI FILII REGIS EDWARDI QUARTO (*continued*).

30. PORTSEYE *v.* HALSTEDE.

I.[1]

Ou l'avowerie fut fete pur rente chargé due al heir par son gardein etc.

Richard de Portesey se pleint de Robert de Halsted qe atort prist soen chival tieu jour etc.

Herle. Robert avowe la prise bone e resnable par la resoun qe Baudewyn del Idle tient le maner de C. en chief du roy, le quel B. par grant le roy granta teu maner au dit Richard e Isabel sa femme a terme de lour ij vies rendant au dit B. e ces heirs xij livres par an e fessant pur lui e pur ses heirs a chief seignurs les services qe as tenemenz appendent. E dount après la mort B. pur le noun age son heir le roi seisit la garde de ceux tenemenz e des altres tenemenz feez e auowesons, par quei nostre seignur le roi granta a R. de Halstede la garde e le mariage des terres e del heir B. del Idle ensemblement ove feez e avowesons e reversions des dowers par son fet qe cy est. (E mist la comission le roi a la court qe ceo tesmoigna.) E dount il lui avoit arrere xxx livres des iij anz jour de la prise; e pur vj livres de les xxx livres etc., Robert avowe la prise du chival.

Richard pria eide de Isabel *et habuit.* E dit fut a lui q'il eust sa femme, la quele vient e se joint. A queu jour l'avoerie fut rehersé pur le joindre.

[1] From *Y* (fol. 176 r°). See note 1 opposite.

PLEAS OF EASTER TERM IN THE FOURTH YEAR OF THE REIGN OF KING EDWARD THE SON OF KING EDWARD (*continued*).

30. PORTSEYE *v.* HALSTEDE.[1]

I.

A case in which an avowry was made by a guardian for a rent charge due to the heir etc.

Richard of Portsea complains of Robert of Halstede that he wrongfully took his horse on a certain day etc.

Herle avows the taking as good and lawful, because Baldwin de l'Isle held the manor of [Hilsea] of the king in chief, and this Baldwin by the king's grant [2] granted the manor to the said Richard and [Agnes] his wife for the term of their two lives rendering to the said Baldwin and his heirs twelve pounds a year, and doing for himself and his heirs to the chief lords the services which are appendant to the tenements. And then the king after the death of Baldwin [3] for the nonage of his heir seized the wardship of these tenements and of other tenements fees and advowsons, and thereupon granted to Robert of Halstead the wardship and the marriage of the lands and of the heir of Baldwin de l'Isle together with the fees and advowsons and reversions of dower by his deed which is here. (And he put before the Court the king's commission [4] which witnessed this.) And then thirty pounds was in arrear to him for three years on the day of the taking. And for six pounds of the thirty pounds etc. Robert avows the taking of the horse.

Richard prayed aid of [Agnes], and he had it; and was told to have her [here on, etc.] She comes and joins herself to him. And on that day the avowry was rehearsed on account of the joinder.

[1] A brief report of this case on a question of process appears in Vol. IV (p. 173) of this Series, where a note from the Record is also printed.

[2] The licence to alienate has not been found.

[3] The writ to the escheator of Hampshire on the death of Baldwin de l'Isle was dated 22 August 1307 (*Cal. of Inq.*, v, p. 26).

[4] The king by letters patent dated 11 September 1307 granted to Robert of Haustede the custody of the lands of Baldwin de l'Isle deceased, to hold during the minority of the son and heir (*Calendar of Patent Rolls*, 1307–1313, p. 7).

Malm. Vous avez bien entendu coment il ont avowé, e dient qe nous tenoms le maner de C. rendant xij livres etc. fessant *ut supra.* Nous dioms qe ceo q'il appelont maner ceo n'est qe un mees e vij^{xx} acres de terre e une acre de bois e vij soudeez de rente des queux sunt tenuz du roi en chief un mees xl acres de terre e vij soudeez de rente par fealté e siute a la court nostre seignur le roi del chastel de Porcestre e par les services de trover un homme a la garde de teu chastel par xx jors, le quel chastel ove les appurtenans le roi E. pere le roi etc. assigna a Margarete la reyne d'Engleterre en dowere, par quel assignement cestui Richard e Isabel sa femme se atturneront issi qe le roy ne retint rien des services a lui ne a ses heirs durrant la vie la reigne par quei vous par le lesse cestui roi par reson de sa prerogatif ne puissez avowerie fere.

Herle. B. granta ceu maner a vous e vostre femme a terme de vos ij vies fessant par an xij livres e les chiefs services pur eux issi qe vous demorrez les tenanz l'eir B. qe est en nostre garde par resoun de son noun age du lees le rey.

Malm. Plus naturelment girreit cestui avowerie a la mere l'eir B. ou a prochein ami qe a vous qe estes tut estrange.

Ber. Ne vous dionț il qe les services issantz des tenementz q'il tient en chief sunt assignez a la reigne. Coment volez vous donqe atreer ceste tenance a la garde le roy par reson de prerogatif sanz moustrer qe B. tient en chief du roi ? (*quasi diceret,* Non).

Herle. Il tient le maner de A. e de B. en chief du roy des queux nous sumes seisi hui ceo jour en noun de garde par le lees le roy, par quei etc.

Malm. A ceo vous respond jeo qe les maners de A. e de B. sunt tenuz en chief du roi bien est veirs, e ceo ne doune mie au roi prerogatif, car il sunt de la seignurie le count de Aumar, qi terres sunt en la main le roi par baronie e ne mie de la corone. Et demandoms jugement etc. e s'il velent dedire, prest del averer.

Herle. A tiel averement ne pooms estre partie sanz le roi, qar du lees le roi avoms ceste garde de totes les terres e les tenemenz l'eir

Malberthorpe. You have heard how they have avowed. They say that we hold the manor of [Hilsea] rendering therefor twelve pounds etc. doing (as above). We say that what they call a manor is only a messuage and seven-score acres of land, and one acre of wood and seven shillings of rent, and of these the messuage forty acres of land and seven shillings of rent are held of the king in chief by fealty and suit to his court of the castle of Porchester, and by the service of finding a man for the ward of that castle for twenty days, which castle with the appurtenances king Edward the father of king Edward etc. assigned to Margaret the queen of England in dower [1]; and on this assignment this Richard and [Agnes] his wife attorned, so that the king retained no services to himself and his heirs during the life of the queen, wherefore you cannot by the lease of this king make an avowry by reason of the king's prerogative.

Herle. Baldwin granted this manor to you and your wife for the term of your two lives rendering therefor twelve pounds a year and performing the chief services for them; so that you remain the tenants of the heir of Baldwin, who is in our ward by reason of his nonage by the lease of the king.

Malberthorpe. This avowry would be more natural for the mother of the heir of Baldwin, or for his next friend than it is for you who are a total stranger.

Bereford C.J. Do they not tell you that the services issuing from the tenements which they hold in chief have been assigned to the queen? How can you draw that tenancy to the king's ward by reason of his prerogative without showing that Baldwin held in chief of the king? (*implying*, that he could not).

Herle. He holds the manors of A. and B.[2] in chief of the king; and we are seised of them this very day in the name of ward by the king's lease. Wherefore etc.

Malberthorpe. To that I answer that true it is that the manors of A. and B. are held in chief of the king; but this does not give the prerogative to the king, for they are of the lordship of the count d'Aumale, whose lands are in the king's hand by barony, and not as of the crown. We ask judgment etc. and if they wish to deny this we are ready to aver it.

Herle. To such an averment we cannot be a party without the king; for we have this wardship of all the lands and tenements of the

[1] The dower was assigned on 10 September 1299 (*Patent Roll*, 27 Edw. I, m. 4; *Rymer's Foedera*, I, ii, p. 912).

[2] Baldwin de l'Isle held the manors of Gatcombe, Whitwell and Calbourne (all in the Isle of Wight) as of the castle of Carisbrooke (*Calendar of Inquisitions*, v, 26).

B. etc. Et si le roi vous eit fet tort, de ceo ne devoms estre chargé. Et demandoms jugement si nous en ceo cas par reson de la prerogatif nostre seignur le roi ne puissoms avowerie fere.

Ber. Il vous dient qe les maners de A. e de B. ne sunt pas tenuz en chief de la corone, einz sunt tenuz en chief du roi par reson de baronie. Est ceste issi ou noun ?

Herle. Nous n'avom mestier a granter ne a dedire.

Ber. Grantez q'il soit issi ; e nous vous deliveroms tost.

Malm. S'il velent dedire nous le voloms averer.

Beref. a *Malm.* De qi sunt les tenemenz ou il ad fet ceste destresce tenuz ?

Malm. Sire, un mies e xl acres de terre e vij soudeez de rente sunt tenuz de la reigne M. e xl acres de cestui Richard qe se pleint etc. e le remenant de Sire Johan de G.

Touth. Tut fut issi qe ceu maners fussont tenuz en chief du roi par resoun de baronie, uncore avoms assez title de avowerie fere par resoun de la prerogatif, car quant le roi assigna les services qe R. e Isabel firent pur B. e ces heirs le roi retint le homage B. a lui e ses heirs, par reson de quel homage la garde de cestes terres tut soient il tenuz des altres seignurages serra regardant nostre seignur le roi, par quei nostre avowerie est assez bone.

Ber. Il me semble par vostre debat qe le roi avera ceste rente.

Alio die Malm. Vous avez bien entendu coment il ont avowé e coment il ont mis en court especiauté qe tesmoigne le grant le roi e coment la garde a eux appent par reson de sa prerogatif, e a ceo vous dioms nous qe les services les queux dorreient au roi la garde si furent assignez a la reigne vivant B. ; et Richard de Porteseye e Isabel sa femme se attornerent a la reigne de lour service. E demandoms jugement si Robert de Halsted com assigne le roi puisse pur services ou pur altres choses en ceo fee avowerie fere.

Herle. A ceo qe vous dites qe Richard e Isabel se attornerent a la reigne, nous vous dioms qe cest atturnement si fut l'atturnement B. del Idle qe lour granta ceux tenemenz a tenir de lui a terme de vie

heir of Baldwin by the king's lease; and if the king has done you a wrong about this we ought not to be charged. We ask judgment whether we cannot make an avowry in this case by reason of the prerogative of our lord the king.

Bereford C.J. They tell you that the manors of A. and B. are not held in chief of the crown, but are held in chief of the king by reason of a barony. Is this so or not?

Herle. We have no need either to grant or to deny it.

Bereford C.J. Grant that it is so; and we will give delivery to you immediately.[1]

Malberthorpe. If they wish to deny it, we will aver it.

Bereford C.J. to *Malberthorpe.* Of whom are the tenements where he has made this distress held?

Malberthorpe. Sir, one messuage and forty acres of land and seven shillings of rent are held of Queen Margaret; forty acres are held of this Richard who complains etc.; and the residue of Sir John of G.

Toudeby. Even though it should be the fact that these manors were held by reason of barony of the king in chief, still by reason of the prerogative we have a sufficient title to make the avowry; for when the king assigned the services[2] which Richard and [Agnes] did for Baldwin and his heirs, the king retained the homage of [Baldwin] to himself and his heirs; and by reason of this homage the wardship of these lands although they may be held of other lords will be regardant to our lord the king. Therefore our avowry is sufficiently good.

Bereford C.J. It appears to me from your arguments that the king should have this rent.

On another day *Malberthorpe.* You have heard how they have avowed, and how they have put before the court a specialty which witnesses the king's grant, and how the wardship belongs to them by reason of his prerogative. To that we tell you that the services which should give the wardship to the king were assigned to the queen in the lifetime of Baldwin; and Richard of Portsea and [Agnes] his wife attorned to the queen for their services. We ask judgment if Robert of Halstede as an assign of the king can make an avowry for service or for anything else in this fee.

Herle. In answer to your statement that Richard and [Agnes] attorned to the queen we tell you that this attornment was the attornment of Baldwin de l'Isle who granted them these tenements to hold

[1] The Chief Justice appears to promise delivery if the avowant grants that the heir holds of the king as of a barony. The text of the report is probably a little faulty here; and perhaps the 'vous' of the report is an error for 'a eux.' We should have expected that the beasts had already been delivered to the plaintiff.

[2] This refers to the assignment to Queen Margaret.

e fessant pur lui e pur ces heirs les services dues des tenemenz as chief seignurs, issi qe B. demurra touz jours le tenant le roi.

Ber. Si mon atturné ou mon baillif facent service pur moy, touz jours jeo demoerge le tenant mon seignur e ma fealté si est regardant mon seignur. Auxi dy jeo par de cea ; si ceo est verité qe vous dites qe Richard e Isabel font les services en le noun B. e ces heirs e noun pas en lour noun demene, issi q'il sunt hui ceo jour les tenants l'eir B.

Malm. Nous ne pooms dedire qe les xij livres ne sunt dues a les heirs B. ; mès veie la court a qi nous ceste rente fere devoms e nous le froms volenters.

Bereford. Nous aviseroms a qi ceste rente apent a resceivre au roi ou a la reigne. Et pur ceo gardez vos jours a la xv^{me} de la Trinité.

quo die Herle. Vous avez bien entendu coment il ount respondu a nostre avowerie e ont dit qe B. del Idle tient de la reigne en chief etc. e a user tel excepcion ne avendront il mie ore, car si le roy fut seisi de la destresce il ne poent nent dire pur quei le roi n'averoit cele rente etc. Et si la reigne voleit cele rente avoir il la covensit suyre au roi par bile, *ergo* vous ne poez vers nous pur la reigne nule rien dire a defere nostre avowerie, car nul homme ne puet par autri droit alleger estre eidé.

Ber. Vous dites mal, qar par my altri droit en meinte cas serra homme eidé etc. Et a ceo qe vous dites s'il ne puet defere l'estat le roi, *ergo* ne le vostre, vous dites talent, car coment ke le roi grante services ou gardes as gentz il ne grante mie sa prerogatif etc.

Malm. Et d'autrepart ceo est une rente secke qe par resoun de altres services a eux velent atreer etc.

Ber. Vous dites talent, ceo est une ferme e noun pas rente secke etc.

II.[1]

Un Richard porta son *replegiare* vers Robert de Haustede.

Toud. (pur Robert) avowa la prise etc. par la resoun qe un B. del Idle[2] tent du[3] roy le maner entier de Haustede ensemblement ove autres tenemenz par service de chivaler le quel Baudewyn enfeffa celi Richard et Alice sa femme de xl[4] acres de terre[5] etc. a tenir a terme de lour[6] vies rendant a B. et a ses heirs xij mars par an et fesaunt pur

[1] From *M* collated with *P.* [2] de Lyle *P.* [3] de *M.* [4] xx *P.* [5] *Om.* de terre *P.* [6] *Ins.* ij *P.*

of him for a term of life doing for him and his heirs the services due from the tenements to the chief lords, so that Baldwin always remained the king's tenant.

Bereford C.J. If my attorney or my bailiff do service for me, always I remain the tenant of my lord, and my fealty belongs to my lord. So I say in this case. If what you say is the truth, that Richard and [Agnes] do the services in the name of Baldwin and his heirs and not in their own name, they are this very day the tenants of the heir of Baldwin.

Malberthorpe. We cannot deny that the twelve pounds are due to the heirs of Baldwin; but let the court say to whom we ought to render this rent, and we will render it willingly.

Bereford C.J. We will be advised to whom it belongs to receive this rent, the king or the queen. And therefore await till the quindene of Trinity.

On that day *Herle.* You have heard how they have answered our avowry, and have said that Baldwin de l'Isle holds of the queen in chief etc. They will not arrive at using that exception now; for if the king were seised of the distress they could not say why the king should not have that rent etc. And if the queen wished to have that rent, it would be necessary for her to sue to the king by bill, therefore you cannot through the queen say anything to defeat our avowry, for no man can be aided by alleging another man's right.

Bereford C.J. You are wrong, for a man may in many cases be aided etc. by another man's right; and as regards your statement that if he cannot defeat the king's estate, therefore he cannot defeat yours, you are talking at random; for although the king grants services or wardships to people he does not grant his prerogative etc.

Malberthorpe. Besides this is a rent seck which they wish to draw to themselves by reason of other services etc.

Bereford C.J. You are wrong. This is a farm and not a rent seck etc.

II.

One Richard brought his writ of replevin against Robert of Halstede.

Toudeby (for Robert) avowed the taking etc. for the reason that one Baldwin de l'Isle held of the king the entire manor of [Hilsea] together with other tenements by knight's service and this Baldwin enfeoffed this Richard and [Agnes] his wife of forty acres of land etc. to hold for the term of their two lives, rendering to Baldwin and his heirs twelve

Baudewyn[1] et pur ses heirs a chiefes seignurages de fee les services dues de tenemenz ; et B. seisi de les xij mars par my ceo grant, le roy granta a la roigne le chastel de P. et touz les services issauntz de mesme le chastel dont Baudewyn[2] tynt, par quel grant Richard et Alice sa femme se attournerent a la roigne des services dues au chastel. B. devia, soun[3] heir deinz age. Le roy seisi la garde par la resoun q'il tent iij maners en chief du[4] roy et granta a Sire Robert de Haustede la garde des terres Johan fitz et heir Baudewyn ove touz les appurtenances appurtenant a cele garde. Et pur les xij mars arrere de taunt de temps si avowe il la prise etc. com gardein assigné de part le roy etc.

Malm. B. enfeffa Richard et Alice sa femme a aver et tenir etc. et fesaunt pur lui et pur ses heirs etc. ; la roigne seisi des services due etc. par l'assignement le roy, issint qe le roy ne reserva rien vers ly. Jugement si vous par resoun de nul garde pussez avowerie fere.

Toud. Vous deissez bien si nous destreinassoms pur les services les[5] queux vous estes attourné a la roigne ; mès ore fesoms nous l'avowerie pur les xij mars les queux Sire B. reserva a ly mesme.

Malm. Issint ensuereyt q'il avereit deux seignurs de un mesme tenement, *quod falsum est etc.*

Herle. Il covent qe vous responez plus haut.

Malb. Sire, Baudewyn ne tent pas en chief de roy ne de la corone mès de baronie[6] de W. Et demaundoms jugement s'il deive en tiel cas aver tiel prerogatif, la ou les maners ne sount pas tenuz de la corone.

Herle. Nous ne pooms pas estre partie a pleder l'estat le roy, mès depus qe le roy nous ad granté par sa commissioun la garde hors de sa seisine ove touz maners des profits et comoditez, et vous ne poiez dedire qe B. ne tent en chief de roy, demandoms jugement.

Berr. Quidez vous si B. ne tent en chief de la corone, mès del barronye de Willem, qe le roy vous put granter ceo q'il ne put mesme aver ? Et pur ceo responez s'il tent ascun maner en chief de la corone.

[1] Willem *M.* [2] Willem *M.* [3] sanz *M*, soun *P.* [4] de *M.* [5] des *P.* [6] Wareyne *P*, barroune *M.*

[pounds] a yeár and doing for Baldwin and his heirs to the chief lords of the fee the services due from the tenements, and when Baldwin was seised of the twelve [pounds] by this grant, the king granted to the queen the castle of Porchester [1] and all the services issuing from the same castle of which Baldwin held ; and on this grant Richard and [Agnes] his wife attorned to the queen for the services due to the castle. Baldwin died, his heir being then within age, and the king seized his wardship for the reason that Baldwin held three manors [2] in chief of the king, and he granted to Sir Robert of Halstede the wardship of the lands of John the son and heir of Baldwin together with all the appurtenances appurtenant to that wardship. And for twelve [pounds] in arrear for so much time he avows the taking etc. as guardian assigned on the part of the king etc.

Malberthorpe. Baldwin enfeoffed Richard and [Agnes] to have and to hold etc. and doing for him and his heirs etc. The queen was seised of the services etc. due etc. by the assignment of the king, in such way that the king reserved nothing to himself. We ask judgment whether you can make an avowry by reason of any wardship.

Toudeby. You would be speaking rightly, if we had distrained for the services for which you attorned to the queen ; but now we are making our avowry for the twelve [pounds] which Sir Baldwin reserved to himself.

Malberthorpe. So it would follow that there were two lords of one and the same tenement, which is absurd etc.

Herle. You must answer higher.

Malberthorpe. Sir, Baldwin did not hold in chief of the king, nor of the crown, but as of the barony of W.[3] We ask judgment if he ought in such a case to have such a prerogative, where the manors are not held of the crown.

Herle. We cannot be a party to pleading on the king's estate, but since the king has granted us by his commission the wardship out of his own seisin together with all kinds of profits and commodities, and since you cannot deny that Baldwin held in chief of the king, we ask udgment.

Bereford C.J. Do you think that, if Baldwin held in chief not of the crown, but of the barony of W., the king can grant you what he cannot himself have ? Therefore answer whether he held any manor in chief of the crown.

[1] See note 1 on p. 2.

[2] See note 4 on p. 1.

[3] He held certain manors in the Isle of Wight of the honour and castle of Carisbrooke which had been in the king's hands since the death of Isabel countess d'Aumale, on 10 November 1293 (see note 2 on p. 1).

Toud. Il tent en chef de la corone les xl acres de terre.

Herle. S'il tent du[1] roy et le roy[2] vous ad[3] granté[4] cele rente et coment qe le roy vous ad granté les comoditez par taunt n'ad il pas granté sa prerogatif.

31. OKHOLT *v.* LE FEVRE.

I.[5]

Une Juliane se pleint qe Henri le Senor atort prist cez avers.

Inge. Henri avowe etc. par la resoun qe Juliane tint de ly tant etc. dount le lou etc. par homage fealté et par escuage *scil.* quant etc. j dener etc. des queux services il fut seisi par mi la meyn Juliane cum par mi la meyn sa verrai tenaunte et pur taunt etc. si avowe il etc.

Will. Lez tenementz furent en aukun temps en la seisine un H. W. et T. qe tindrent lez tenementz joyntement qe hors de lour seisin donerent lez tenementz a un H. auncestre cete Juliane qi heir ele est par ceste chartre a tenir de eux mesmes par homage e fealté e vj deners par an fesaunt a chescun de eux ij deners, issi qe H. de sa purpartie des services ad feffé ceti Henri. E desicum H. n'ad for que l'estat Henri joynt ove les autres, jugement s'il pur l'entier pusse avowerie fere.

Ingham. Sire, nous avoms avowé de nostre seygnourie demene del entier des services par mi la meyn ceste Juliane e dioms outre que un T. fut seisi par mi la meyn ceste Juliane del entier dez services le quel T. enfeffa cesti H. de lez ditz services et a li assigna la dite Juliane par quel assignement Juliane s'attourna al dit Henri del entier des services ; e en ceste avowerie il nous suffit d'averrer la seisine nostre feffour del entier e nostre seisine demene.

Hervy. Desicom Juliane mostre la chartre H. W. et T. qe testmoigne la seignourie a eux iij joyntement, il covent q'il respoigne par la.

Pass. Quant lez tenementz furent en la seisine H. W. e T. il tyndrent joynt e alienerent a H. a tenir de eux mesmes, issi qe si la

[1] de *M.* [2] *sic P*, *Om.* et le roy *M.* [3] a *M*, ad *P.* [4] *Om.* granté *P.*
[5] From *P.*

Toudeby. He holds the forty acres of land in chief of the crown.

Herle.[1] If he held of the king and the king has granted [to us] that rent [with the wardship], even though he has granted to the queen certain commodities he has not thereby granted his prerogative.

31. OKHOLT *v.* LE FEVRE.[2]

I.

One Gillian complains that [Hugh le Fevre] wrongfully took her beasts.

Hengham. [Hugh] avows etc. for the reason that Gillian holds of him so much etc., whereof the place is etc. by homage fealty and scutage, to wit, when the scutage is at forty shillings, one penny etc. ; of which services he was seised by the hand of Gillian as by the hand of his very tenant, and for so much etc. he avows etc.

Willoughby. The tenements were sometime in the seisin of [Walter William and Hugh the son of Alan] who held them jointly, and out of their seisin gave them to one Hamond the ancestor of this Gillian, whose heiress she is, by this charter to hold of them by homage and fealty and six pence a year paying to each of them two pence ; and Hugh enfeoffed this [Hugh le Fevre] of his share of the services. And inasmuch as this Hugh [le Fevre] has nothing but the estate of [Hugh the son of Alan] jointly with the others we ask judgment whether he can make an avowry for the entirety.

Hengham. Sir, we have avowed of our own seignoury of the entirety of the services by the hands of this Gillian and we say further that one [Geoffrey] was seised by the hand of this Gillian of the entirety of the services, and this [Geoffrey] enfeoffed this Hugh [le Fevre] of the said services and assigned to him [the services of] the said Gillian on which assignment Gillian attorned to the said Hugh [le Fevre] for the entirety of the services. And in this avowry it is sufficient for us to aver the seisin of our feoffor of the entirety, and our own seisin.

Stanton J. Inasmuch as Gillian shows the charter of Walter William and Hugh which witnesses the seignoury in those three jointly, Hugh [le Fevre] must answer accordingly.

Passeley. When the tenements were in the seisin of Walter William and Hugh [the son of Alan], they held jointly and alienated to Hamond

[1] The text of this speech is corrupt in both manuscripts; and the translation is conjectural.

[2] This is a difficult case to interpret, as the proper names or the initials representing them are in many instances incorrectly written in both reports. They are corrected in the following translation by the aid of the Record.

seignourie fut demuraunt en lour persouns joynt ou al un de eux issi qe si l'un fut devie le dreit de sa purpartie descendreit a lez autres ij ; e si les ij deviassent le terce avereit l'entier dez services, par quei le un saunz l'autre ne put pas aliener.

Ing. Taunt amounte qe vous ne tenez pas de nous, e pur ceo desclamez.

Will. Il ne covent pas, quar assez avoms defet vostre avowerie.

Inge. Qe H. fut seisi del entier dez services e dez tenementz issi qe lez autrez rien avoient e hors de sa seisine enfeffa H. auncestre mesme ceste Juliane qi heir ele est a tenir de ly mesme par lez services avauntditz etc. De H. descendi le dreit etc. de lez services avauntdiz al avauntdit Willem cum a fiz et heir, le quel Willem fut seisi de les services avauntdiz par mi la meyn H. De W. pur ceo q'il morust saunz heir de soun corps descendi le dreit dez services avauntdiz a T. cum a frere e heir le quel T. fut seisi del entier dez services par mi la meyn ceste Juliane, le quel T. nous graunta lez services, par quel graunt Juliane s'atourna de sa fealté, par quel atournement nous fumes seisi del entier dez services, prest etc.

Will. Qe[1] nostre auncestre Gerberge Juliane et Alice. De G. pur ceo qe ele morust saunz heir de soun corps descendi le dreit de sa purpartie a Juliane et Alice. De Alice issit un Robert q'ore est en pleyne vie saunz qi nous ne pooms estre partie a cest averement. E prioms eide de ly etc.

Inge. Nous avoms lié nostre avowerie par my nostre seisine demene e par mi vostre meyn demene, a quele avowerie il est tut estraunge, par quei n'averez mie.

II.[2]

Ou l'estrange purchasour fut chacé a respondre au fet l'auncestre son feffour etc.

Une Juliane se pleint qe A. atort prist un soen boef etc.

A. avowa la prise bone e droiturele par la reson qe Juliane tient ij acres de terre par homage e escuage, *scilicet* quant l'escu court a xl souz j dener et les services de vj deners des queux services il fut seisi

[1] The text of this speech is obviously corrupt. Unfortunately the Record gives us no help, as the prayer for aid was not granted and is not enrolled.
[2] From *Y* (fol. 175 v°).

to hold of themselves, so that the seignoury should so remain in their persons jointly, or in one of them, and so that if one of them were to die the right of his share should descend to the other two, and if the two should die the third should have the entirety of the services so that one without the others could not alienate.

Hengham. Tantamount to this, that you do not hold of us. Therefore disclaim.

Willoughby. It is not necessary, for we have sufficiently defeated your avowry.

Hengham. [Hugh the son of Alan] was seised of the entirety of the services and tenements so that the others had nothing and out of his seisin enfeoffed Hamond the ancestor of this same Gillian, whose heiress she is, to hold of him by the services aforesaid etc. From H. descended the right etc. of the services aforesaid to the aforesaid [Alan] as son and heir, and [Alan] was seised of the services aforesaid by the hand of Hamond; from [Alan] because he died without an heir of his body, descended the right of the services aforesaid to [Geoffrey] as brother and heir; and this [Geoffrey] was seised of the entirety of the services by the hand of this Gillian; and this [Geoffrey] granted the services to us, upon which grant Gillian attorned for her fealty, and by this attornment we were seised of the entirety of the services. Ready etc.

Willoughby.[1] [From] Hamond our ancestor [descended the right to] Gerberge, Gillian and Alice. From Gerberge because she died without an heir of her body, the right of her share descended to Gillian and Alice. From Alice issued one Robert who is now alive, and without whom we cannot be a party to this averment. We pray aid of him etc.

Hengham. We have laid our avowry on our own seisin and by your own hand; and to this avowry Robert is altogether a stranger. Therefore you should not have aid of him.

II.

Where a strange purchaser was driven to answer the deed of the ancestor of his feoffor etc.

One Gillian complained that [Hugh] wrongfully took her ox etc.

[Hugh] avowed the taking as good and rightful for the reason that Gillian held two acres of land by homage and scutage, that is to say, one penny, when the scutage was at the rate of forty shillings, and by the service of six pence of which services he was seised by the hand of

[1] See note 1 opposite. It is impossible to give more than a conjectural interpretation of the text of this speech. It will be noticed that the descent here given is different from that in the corresponding speech made by Claver in the second report.

par mi la main Juliane com par mi la main sa verraie tenante. E pur les vj deners arere par un an jour de la prise, si avowe il en le lieu ou il se pleint com parcel etc.

Claver. A ceste avowerie ne devez estre resceu, qar nous vous dioms qe ces ij acres furent en la seisine B. C. e Geffrei jointement les queux B. C. e G. jointement hors de lour seisine fefferent P. pere cestui Juliane qi heir ele est devant l'estatut par ceste chartre a tenir de eux e de lour heirs fessant les services avantdiz issi qe chescon avereit ij deners par an les queux services Geffrei granta a cestui A. E demaundoms jugement desicom il n'ad qe l'estat de un des parceners si pur l'entier des services puisse avowerie fere.

Hengh. Quei responez vous a nostre seisine ?

Claver. Nous n'avom mestier a respondre a vostre seisine, qar vous n'avez qe l'estat de un des parceners. Jugement *ut supra.*

Hengh. Jeo n'ay mestier mes pleder al estat mon feffour ou a mon estat demene e jeo voille averer qe G. fut seisi del entier de vos services les queux enterement il nous granta e assigna par queu grant et assignement vous attornastes, e issi seisi, prest etc.

Claver. Nous sumes feffé par chartre e ne entendoms mie qe encontre la forme de nostre chartre devoms estre destreint.

Hervi. A peyn si vous seez en cas del statut etc.

Et postea *Hervi* dixit *Hengham,* Alez plus prez vostre matir.

Hengham. Sire, nous vous dioms qe un G. fut seisi de ses ij acres de terre qe hors de sa seisine enfeffa P. pere Juliane par les services avantdiz. De P. descendi le dreit des services a M. De M. descendi etc. a Geffrey le quel G. fut seisi enterement des avantdiz services, e pus nous granta mesme les services par queu grant J. se attorna etc.

Hervy a *Claver.* Il ont fet title de avowerie, mestier vous est a ceo respondre.

Claver. Nous vous dioms qe B. C. et G. furent seisiz de les ij acres de terre e fefferont P. nostre pere *ut supra.* De P. descendi le dreit des tenementz a Is. Alice et ceste Juliane com a iij soers et un heir, e prioms aide de eux si aver le devoms.

Gillian as by the hand of his very tenant. And for six pence in arrear on the day of the taking he avows in the place, wherein the plaintiff complains etc., as parcel etc.

Claver. To this avowry you ought not to be received, for we tell you that these two acres were in the seisin of [Walter William and Hugh the son of Alan] jointly; and these persons out of their seisin enfeoffed [Hamond] the father[1] of this Gillian, whose heir she is, before the statute[2] by this charter, to hold of them and their heirs, doing the services aforesaid so that each one of them should have two pence a year; and these services [Hugh the son of Alan] granted to Hugh [le Fevre] who now avows. We ask judgment, seeing that he has nothing but the estate of one of the parceners if for the entirety of the services he can make an avowry.

Hengham. What is your reply to our seisin?

Claver. We have no need to reply to your seisin, for you have only the estate of one of the parceners. We ask judgment (as above).

Hengham. I have no need to do more than plead on the estate of my feoffor or my own estate. I wish to aver that [one Geoffrey] was seised of the entirety of your services, and these in their entirety he granted and assigned to us, on which grant and assignment you attorned. So we are seised; ready etc.

Claver. We are enfeoffed by charter, and we do not think that we ought to be distrained against the form of our charter.

STANTON J. Hardly, if you are in the case of the statute etc.

Afterwards STANTON J. said to *Hengham*, Keep more closely to your matter.

Hengham. Sir, we tell you that one [Hugh the son of Alan] was seised of these two acres of land, and he out of his seisin enfeoffed [Hamond] the father[1] of Gillian by the services aforesaid. From [Hugh] descended the right of the services to M. From M. descended etc. to Geoffrey; and this Geoffrey was seised of the aforesaid services in their entirety; and then granted us the same services upon which grant Gillian attorned etc.

STANTON J. to *Claver*. He has made a title for his avowry, and you must answer.

Claver.[3] We tell you that [Walter William and Hugh] were seised of the two acres of land and enfeoffed [Hamond] our father[1] (as above). From Hamond descended the right in the tenements to Isabel Alice and this Gillian as to three sisters and one heir, and we ask aid of them, if aid we ought to have.

[1] He is described as her 'ancestor' in the Record.

[2] Stat. *Quia Emptores*, 18 Edw. I. [3] See note 1. p. 7 *left* above.

Hervi. Vous avez conu en pledaunt qe vous tenez de eux iij etc. Coment averiez vous ore eide de ceo qe vous avez primes conu soul estre tenant ? (*quasi diceret,* Non habebit).

Et postea dies datus in octabis sancti Michaelis prece parcium.

The Record of the Case.

De Banco Rolls, 4 Edw. II., Easter (No. 185), 61d., Norfolk.

Hugo le Feure de Denton summonitus fuit ad respondendum Iuliane de Okholt de placito quare cepit quandam uaccam ipsius Iuliane et eam iniuste detinuit contra uadium et plegios etc. Et unde eadem Iuliana per Thomam de Brampton attornatum suum queritur quod predictus Hugo die Lune proxima post festum sancti Martini in Yeme anno regni regis nunc secundo in uilla de Denton in quodam loco qui uocatur Oldboneslond apud Estgate cepit ipse predictam uaccam ipsius Iuliane et eam fugauit usque ad domum ipsius Hugonis et eam iniuste detinuit contra uadium etc. quousque etc. Unde dicit quod deteriorata est et dampnum habet ad ualenciam centum solidorum etc. Et inde producit sectam etc.

Et Hugo per Willelmum de Gypewico attornatum suum uenit et defendit uim et iniuriam quando etc. et bene aduocat predictam capcionem et iuste etc., quia dicit quod predicta Iuliana tenet de ipso Hugone unum messuagium et duas acras terre cum pertinenciis in predicta uilla de Denton per homagium fidelitatem et seruicium militare uidelicet ad scutagium domini regis quadraginta solidorum cum acciderit unum denarium et ad plus plus et ad minus minus et per seruicium sex denariorum per annum de quibus seruiciis idem Hugo fuit seisitus per manus ipsius Iuliane ut per manus uere tenentis sui etc. Et quia predictum seruicium sex denariorum per annum ei aretro fuit per unum annum ante diem capcionis predicte cepit ipse predictam uaccam in predicto loco in feodo suo sicut ei bene licuit etc.

Et Iuliana dicit quod predictus Hugo predictam capcionem iustam pro predicto seruicio sex denariorum per annum super ipsam Iulianam iustam aduocare non potest in hac parte quia dicit quod predicta tenementa in quibus etc. dudum fuerunt in seisina quorundam Walteri et Willelmi filiorum Galfridi Hakun et cuiusdam Hugonis filii Alani Hakun qui tenementa illa tenuerunt coniunctim et pro indiuiso qui de tenementis illis per cartam suam feoffarunt quendam Hamonem filium Roberti Moruan antecessorem predicte Iuliane tenendis sibi et heredibus[1] suis de ipsis Waltero Willelmo et Hugone et heredibus suis per predicta scutagium etc. et seruicium sex denariorum per annum ad quatuor anni terminos etc. scilicet unicuique eorum unum obolum ad quemlibet terminum etc. Et profert quandam cartam sub nomine predictorum Walteri Willelmi et Hugonis filii Alani etc.

[1] The word ' cras ' is here written in the margin of the roll.

Stanton J. You have acknowledged in pleading that you hold of those three etc. How can you now have aid concerning that which you have already acknowledged yourself to be sole tenant ? (*implying*, She will not have it).

Afterwards at the prayer of the parties a day was given, namely the octave of St. Michael.

Translation of the Record.

For the reference, see opposite.

Hugh le Fevre of Denton was summoned to answer Gillian of Okholt on a plea wherefore he took a certain cow belonging to her the said Gillian and wrongfully detained it against gage and pledges etc. And whereupon the same Gillian by Thomas of Brampton her attorney complains that the aforesaid Hugh on the Monday [1] next after the feast of St. Martin in winter in the second year of the reign of the king who now is himself took in the vill of Denton in a certain place which is called Oldboneslond at Estgate the aforesaid cow belonging to her the said Gillian and drove it to the house of him the said Hugh, and wrongfully detained it against gage etc. until etc. Whereupon she says that she is injured and has damage to the value of one hundred shillings etc. ; and thereof she brings suit etc.

And Hugh comes by William of Ipswich his attorney and denies tort and force when etc. and well he avows the aforesaid taking, and rightly etc. because he says that the aforesaid Gillian holds of him the said Hugh one messuage and two acres of land with the appurtenances in the aforesaid vill of Denton by homage fealty and knight's service, to wit, for the lord king's scutage of forty shillings when it falls due one penny and for more more and for less less and by the service of six pence a year of which services the same Hugh was seised by the hands of her the said Gillian as by the hand of his very tenant etc. And because the aforesaid service of six pence a year was in arrear to him for one year before the day of the taking aforesaid he himself took the aforesaid cow in the aforesaid place in his fee as well he might etc.

And Gillian says that the aforesaid Hugh cannot avow the aforesaid taking upon her the said Gillian for the aforesaid service of six pence a year as rightful in this matter, for she says that the aforesaid tenements in which etc. were sometime in the seisin of certain persons Walter and William the sons of Geoffrey Hakun and of one Hugh the son of Alan Hakun who held those tenements jointly and undivided, and who of those tenements by their charter enfeoffed one Hamond the son of Robert Morvan the ancestor of the aforesaid Gillian to hold to him and his heirs of them the said Walter William and Hugh and their heirs by the aforesaid scutage etc. and the service of six pence a year at the four terms of the year etc. that is to say, to each one of them a halfpenny at each term etc. And she produces a certain charter under the names of the aforesaid Walter William and Hugh the son of Alan etc. which

[1] 18 November 1308.

The Record of the Case—*continued.*

que predicta feoffamentum et seruicium testatur in forma predicta. Et dicit quod de predicto Hugone filio Alani descendit ius propartis sue predicti seruicii cuidam Alano ut filio et heredi et de ipso Alano quia obiit sine herede de se descendit ius etc. cuidam Galfrido ut fratri et heredi qui quidem Galfridus propartem suam predicti seruicii concessit isti Hugoni le Feure qui nunc aduocat etc. Unde petit iudicium etc.

Et super hoc dies datus est eis hic a die sancti Michaelis in quindecim dies prece parcium sine essonio saluis partibus hinc inde racionibus suis dicendis etc.

32. TRENCHARD *v.* TRENCHARD.[1]

En un bref de prise des avers le pleintif counta q'atort prist son tor.[2]

Denom. La ou il ad counté qe nous primes le tor en tel lieu nous primes le tor[3] e xviij berbitz en tiel lieu etc. nent en le lieu ou il se pleinte, et prie[4] retourn, avowoms etc. de tel tor[2] e xviij berbitz.

Stant. Vous avowez plus largement q'il ne se pleinte.

Denom. Se fasoms pur retourn avoir.

Stant. Voillez avoir retourn de ceo qe vous ne pristes ?

Denom. Nous primes le tor[2] et xviij berbitz et la deliveraunce de ceo fet par vicounte.

Stanton. Quei de ceo ? Il ne se pleint forsqe de un tor,[2] et si vous voillez l'avowerie fere de cele tor et del[5] berbitz, il vous covent dire qe les berbitz suwerent[6] le tor et fere l'avowerie qe[7] de un tor,[2] qe nous ne avoms garraunt de receyvre tiel avowerie, del hure[8] qe son bref veot qe vous ne pristes forsqe un tor.[2]

Et pus *Botiler* avowa de un tor[2] et pur retourn avoir.

Et sic nota qe la ou homme se pleint de une beste pris, nent de plusours bestes com de un tor ou de un chival etc. il[9] ne purra mye enlarger[10] s'avowerie, mès il[11] se pleint de plusours bestes[12] et dit[13] en son bref il[14] purra enlarger s'avowerie de plus des bestes qe ele ne se pleint.[15] Et hoc secundum oppinionem quorundam.

[1] From *M* collated with *P*. [2] toupe *P*. [3] *sic P*, *Om.* en tel . . . tor *M*. [4] prioms *P*. [5] de lez *P*. [6] suorent *P*. [7] *Om.* qe *P*. [8] depuis *P*. [9] le defendaunt *P*. [10] *sic P*, charger *M*. [11] *sic M*, si homme *P*. [12] *Ins.* atort pris *P*. [13] *Om.* et dit *P*. [14] le defendaunt *P*. [15] *For* ele . . . pleint, *subs.* ne sount en le bref noumbrez *P*.

Translation of the Record—*continued.*

witnesses the aforesaid feoffment and service in the form aforesaid. And she says that from the aforesaid Hugh the son of Alan the right of his share of the aforesaid service descended to one Alan as son and heir, and from him the said Alan because he died without an heir of his body the right etc. descended to one Geoffrey as brother and heir, and this Geoffrey granted his share of the aforesaid service to this Hugh le Fevre who now avows etc. Whereupon she asks judgment etc.

And upon this a day is given them here, fifteen days after Michaelmas, at the prayer of the parties without an essoin their arguments on either side being reserved to the parties etc.

32. TRENCHARD *v.* TRENCHARD.

On a writ of *prise des avers* the plaintiff counted that the defendant wrongfully took his bull.

Denham. There where he has counted that we took the bull in such and such a place, [there we say that] we took the bull and eighteen sheep in such and such a place etc. and not in the place where he complains that his bull was taken. We pray return; and we avow etc. for this bull and eighteen sheep.

Stanton J. You avow more largely than he complains.

Denham. We do so to have the return.

Stanton J. Would you have the return of what you have not taken[1]?

Denham. We took the bull and eighteen sheep, and delivery of them was made by the sheriff.

Stanton J. What of that? He makes his complaint of a bull only; and if you wish to make your avowry of that bull and of the sheep,[2] you must say that the sheep followed the bull, and make the avowry of a bull only; for we have no warrant to receive such an avowry, since his writ says that you took a bull only.

And then *Botiller* avowed for a bull, and prayed to have the return.

And so note that where a man complains of one beast taken and not of several beasts, as of a bull or a horse etc., the defendant cannot enlarge his avowry; but if a man complains in his writ of several beasts wrongly taken, the defendant can enlarge his avowry with more beasts than those of which the plaintiff complains. This is according to the opinion of some people.

[1] That is to say, of more than he is alleged in the writ to have taken.

[2] That is, if he wishes to avow for the bull and have return of the sheep.

The Record of the Case.

De Banco Rolls, 4 Edw. II., Easter (No. 185), r. 59, Devon.

Willelmus filius Michaelis Trenchard summonitus fuit ad respondendum Roberto Trenchard de Byclescumbe de placito quare ipse simul cum Iohanne le Whyte Henrico de Yalmeford Willelmo Carre Thoma Payard et Alicia sorore eius et Roberto Cole cepit quemdam taurum ipsius Roberti Trenchard et eum iniuste detinuit contra uadium et plegios etc. Et unde idem Robertus queritur quod predictus Willelmus simul cum etc. die Lune proxima post Mediam Quadragesimam anno domini regis nunc tercio in uilla de Byclescumbe in quodam loco qui uocatur Merley cepit predictum taurum et eum iniuste detinuit contra uadium etc. quousque etc.; unde dicit quod deterioratus est et dampnum habet ad ualenciam centum solidorum. Et inde producit sectam etc.

Et Willelmus per attornatum suum uenit et defendit uim et iniuriam quando etc. et bene aduocat capcionem predicti tauri, set non in predicto loco de Merley, immo in quodam loco qui uocatur Wyngeresdon in suo separali etc. dampnum facientem. Et hoc paratus est uerificare etc.

Et Robertus dicit quod predictus Willelmus simul etc. predictis die et anno cepit predictum taurum in predicto loco de Merley sicut queritur et non in predicto loco de Wyngeresdon sicut idem Willelmus dicit. Et de hoc ponit se super patriam.

Et Willelmus similiter etc.

Ideo preceptum est uicecomiti quod uenire faciat hic in octabis sancti Michaelis xij etc. per quos etc. et qui nec etc. quia tam etc.

33. DIVERS NOTES.[1]

(*a*) En un bref de dowere le tenaunt voucha a garraunt, qe dit q'il n'avoit rien par descente de le tenementz. L'autre dit q'il avoit assez jour de bref purchacé, coment q'il avoit pus aliené a son frere.

Staunton. Si vous voillez l'averrer q'il avoit assez le jour de voucher, nous le resceverioms, mès noun pas ceo qe vous tendez.

Mès s'il fut demaundaunt il serroit barré.

(*b*) En un play de dowere le tenaunt voucha a garraunt de la terce partie de une darré de rente et de les services de ij feez de chivaler.

[1] The first four notes are from *M* (fol. 39 r°) and the fifth from *M* (fol. 36 v°).

Translation of the Record.

For the reference, see opposite.

William the son of Michael Trenchard [1] was summoned to answer Robert Trenchard of Byclescumbe on a plea wherefore he together with John le Whyte Henry of Yalmeford William Carre Thomas Payard and Alice his sister and Robert Cole took a certain bull belonging to him the said Robert Trenchard and wrongfully detained it against gage and pledges etc. And whereupon the same Robert complains that the aforesaid William together etc. on the Monday [2] next after Mid Lent in the third year of the lord king who now is took the aforesaid bull in the vill of Byclescumbe in a certain place which is called Merley and wrongfully detained it against gage etc. until etc. Whereupon he says that he is injured and has damage to the value of one hundred shillings, and thereof he brings suit etc.

And William by his attorney comes and denies tort and force when etc., and well he avows the taking of the aforesaid bull, but not in the aforesaid place of Merley, but in a certain place which is called Wyngeresdon in his own several etc. damage feasant. And this he is ready to aver etc.

And Robert says that the aforesaid William together etc. took the aforesaid bull on the aforesaid day in the aforesaid year in the aforesaid place of Merley as he complains and not in the aforesaid place of Wyngeresdon as the same William says; and of this he puts himself upon the country.

And William likewise etc.

Therefore the sheriff is ordered to cause to come here on the octave of St. Michael twelve etc. by whom etc. and who neither etc. because as well etc.

33. DIVERS NOTES.

(*a*) On a writ of dower the tenant vouched to warranty. The warrant said that he had nothing in the tenements by descent. The other said that he had assets on the day when the writ was purchased, and that since then he had alienated them to his brother.

Stanton J. If you wish to aver that he had assets on the day of the voucher we will receive the averment; but not the averment which you offer.

But if it were the demandant (who had alienated after the writ was purchased) he would be barred.[3]

(*b*) In a plea of dower the tenant vouched to warranty concerning the third part of one penny of rent and the services of two knight's fees.

[1] Other proceedings in replevin at the suit of Gregory atte Thorne against the same defendant are entered on the same roll as this record.

[2] 30 March 1310.

[3] The tenant might produce the deed of the plaintiff's ancestor and claim that he was bound to warrant to him. This would bar the demandant if he had assets by descent at the date of the purchase of the writ. This paragraph is general and is not intended to refer to writs of dower.

Le voucher ne fut pas resceu, pur ceo q'il deȝ services de deux feez de chivaler, pur ceo q'il deust dire de deux feez de chivaler.

(*c*) Nota qe femme qe tent en forme taillé, tut seit la possibilité del issue esteint ele ne se attournera pas—par *Ber.*, qar ele put fere waste.

(*d*) *Nota.* Si appel de felonie soit abatu, ja par mesme cesti ne serra resuscité, mès par autre possible est. Un atteinte ne put james estre resuscité, s'il seit abatu par noun suyte, si le pleintif soit d'age etc.

(*e*) En un bref de dowere le tenant allega qe un A. porta bref de cosinage q'est de plus haut date qe put etc.

Ber. Quei responez a la femme ?

Malb. Mesqe nous responoms a la femme l'autre recovera.

Ber. Asses.

Malb. Nous rendoms par congé.

The voucher was not received, because it was of ' the services of two knight's fees,' whereas he should have said ' of two knight's fees.'

(*c*) Note, that a woman who holds in fee tail, although the possibility of issue be extinct, will not attorn—according to Bereford C.J., for she can make waste.

(*d*) *Note.* If an appeal of felony be abated, it cannot be revived by the same appellant, but it may be by another. An attaint can never be revived if it be abated by non-suit, if the plaintiff be of full age.

(*e*) On a writ of dower the tenant alleged that one A. had brought a writ of cosinage against him which was of an earlier date than could be etc.

Bereford C.J. What answer do you make to the woman?

Malberthorpe. Even if we answer the woman, the other party will recover.

Bereford C.J. That is enough.

Malberthorpe. We render dower to her by leave.

PLACITA DE TERMINO SANCTE TRINITATIS ANNO REGNI REGIS EDWARDI FILII REGIS EDWARDI QUARTO.

1. SAGOR *v.* ATTE WELLE.

I.[1]

Ael ou le demandant ne fuist pas resceu a bastarder le pere le defendaunt après sa mort.

Un Jon de B. porta soun bref d'ael devers un W. et fit la descente de T. a A., de A. a J. q'ore etc.

Toud. La ou il porte cestui bref d'ael et fit sa descente de T. a A., de A. a J. etc.[2] nous conissoms bien la seisine T. et q'il morust seisi ; et vous dyoms que après sa mort entra un W. come fuiz et heir et morust,[3] après qi mort nous entrames come fuiz et heir. Jugement s'il puissent par cestuy bref accioun avoir.

Hengh. La ou il dient qe après la mort T., W. entra come fuiz et heir et morust etc. après qi mort il entra,[4] se dit il,[5] come fuiz et heir, la vous dyoms qe après la mort T. W. n'entra pas *inmediate*, mès fist[6] un G.[7] come nostre tolleresse. Jugement s'il nous puisse d'accioun reboter.

Ber. Coment replietz vous a soun respounse ? Il vous dit qe W. entra come fuiz et heir *ut supra*. Quidetz vous de luy ouster de ceo respounse, a dire q'il n'entra pas *inmediate* après la mort T. ? [8]

Ing. Sire, W. n'entra pas saunz meen. Jugement.

Ber. Il vous dit q'il entra après la mort T.[9] *ut supra*. Responez a ceo.

Heng. Le entré W. ne nous doit grever, q'il fuist bastard.

[1] From *B*, collated with *G* and *M*. This is reported as of the preceding term in *B* and *G*. [2] *Ins.* et *B*. *For* La ou . . . J. etc. *subs.* La ou il demande de la seisine son ael fessaunt sa descente ut supra, Sire, *M*. [3] *Ins.* seisi *G*. *Om.* et vous . . . morust *M*. [4] *Om.* il entra *M*. [5] *Ins.* q'il entra *M*. [6] fut *G*. [7] Julian *M*. [8] *Ins.* quasi diceret, non, *G*. [9] *Om. Ing.* Sire . . . mort T. *M*.

PLEAS OF TRINITY TERM IN THE FOURTH YEAR OF THE REIGN OF KING EDWARD THE SON OF KING EDWARD.

1. SAGOR *v.* ATTE WELLE.

I.

Ael. The demandant was not received to bastardize the father of the defendant after his death.

One [John Sagor] brought his writ of ael against one William and made the descent from Thomas to Alice, from Alice to John, who now demands etc.

Toudeby. There where he brings this writ of ael and makes his descent from Thomas to Alice, and from Alice to John etc., we well acknowledge the seisin of Thomas and that he died seised, [but] we tell you that after the death of Thomas one [Walter] entered as son and heir and died seised; and after his death we entered as son and heir. We ask judgment, whether he can have an action by this writ.

Hengham. There where they say that after the death of Thomas Walter entered as son and heir and died seised etc., and that after his death William entered, as he says, as son and heir, there we tell you that after the death of Thomas Walter did not enter immediately; but one G. entered as our tolleress. We ask judgment whether he can rebut us from the action.

Bereford C.J. How are you replying to his answer? He tells you that one [Walter] entered as son and heir (as above). Do you think that you will oust him from that answer by saying that Walter did not enter immediately after the death of Thomas?

Hengham.[1] Sir, Walter did not enter save after another. We ask judgment.

Bereford C.J. He tells you that Walter entered after the death of Thomas (as above). Reply to that.

Hengham. The entry of Walter ought not to harm us, for he was a bastard.

[1] It is assumed that *Ing.* in the text represents *Hengham.*

Pass., Toud., Scrop. disoient q'il ne luy bastardereit point, q'il entra come fuiz et heir et fuist seisi xx aunz et morust seisi, sauntz estre reclamé en sa vie, et W. come fuiz et heir[1] est einz.

Hengh. savoit bien q'il ne luy pout pas bastarder ne autre voie n'avoit a pledier.[2] Et fuist nounsiwy.

II.[3]

Bref de ael ou excepcion de dreyn seisi fut allegé etc.; ou il dist qe sa purpartie[4] ne lui deveroit greuer *quia bastardus*; e pur ceo q'il entra après la mort son piere com fuitz e heir il ne lui poeit bastarder sanz ceo q'il donoit autre piere—par *Bereford.*

Un A. porta bref de ael vers B. de la seisine E.[5]; descendi a D., de D. a A. q'ore demande.

Scrop. Bien est verité, qe E.[6] murust seisi, après qi mort entra un G. com fuitz e heir, out e tient etc. e murust seisi. [Et c'est un bref de possession et veut estre porté de la mort le dreyn seisy. Jugement.

Denom. Sa seisine ne nous deit grever, qar sa quitaunce ne sa felonie nous ne barreit mye, qar il entra cum nostre tollour. Jugement.

Scrop. Vous ne dedites q'il ne fut fiz eygné et q'il entra après la mort Johan cum fitz et heir et q'il murust seisi.][7]

Denum. Si vous nous volez de cesti bref de possession ouster par excepcion de dreyn seisi, il vous covent doner nous bref de la[8] seisine, e ceo ne poez, qe il fu bastard e entra com nostre tollour. Jugement.

Scrop. Vous nous[9] avetz conu partie, *scilicet* q'il entra e q'il fu dereyn seisi, e vous dioms q'il fust fuitz E.[10] e eigné e murust seisi Jugement, si vous le poetz bastarder.

Denum. Sa seisine ne nous deit grever, ne com fuitz e heir ne put il entrer, q'il fu bastard.

Ber. Il covent qe vous lui donez[11] autre pier, si vous lui voletz bastarder, q'il ad dit *ut supra*, e q'il murust seisi etc.

[1] *Om.* et fuist . . . et heir *M.* [2] prendre *M.* [3] From *D*, collated with *P.* [4] Apparently written in error for 'possession.' [5] Johan *P.* [6] J. *P.* [7] This passage, which is omitted in *D*, is supplied from *P.* [8] sa *P.* [9] *Om.* nous *P.* [10] Johan *P.* [11] doynez *P.*

Passeley, Toudeby and Scrope said that he would not bastardize Walter, for he entered as son and heir and was seised twenty years, and died seised, without having been challenged in his lifetime, and William as his son and heir is 'in.'

Hengham knew well that he could not bastardize Walter and had no other way in which to plead. And he was non-suited.

II.

A writ of *Ael* where an exception of last seisin was alleged etc. And it was said that this ought not to harm the demandant because the person [alleged to be last seised] was a bastard. And because this man entered after the death of his father as son and heir the demandant could not bastardize him without naming another father for him—by Bereford C.J.

One A. brought a writ of ael against B on the seisin of E. From E. the tenements descended to D. and from D. to A. who now demands.

Scrope. True it is, that E. died seised; but after his death one G. entered as son and heir, had and held etc. and died seised. And this is a writ of possession and should be brought on the death of the last person seised. We ask judgment.

Denham. His seisin ought not to harm us, for neither his acquittance nor his felony would bar us, for he entered as our toller. We ask judgment.

Scrope. You do not deny that he was the elder son, and that he entered after the death of E.[1] as son and heir and that he died seised.

Denham. If you wish to oust us from this writ of possession by an exception of last seised, you must give us another writ as regards the seisin; and that you cannot do, for G. was a bastard and entered as our toller. We ask judgment.

Scrope. You have acknowledged part of what we say, namely, that G. entered and that he was last seised. We tell you that he was the son of E. and the elder son and that he died seised. We ask judgment whether you can bastardize him.

Denham. His seisin ought not to harm us. He could not enter as son and heir, for he was a bastard.

Bereford C.J. You must name some other father for him, if you wish to bastardize him; for the tenant has said (as above), and that G. died seised etc.

[1] He is called John in *P.* See the French text and note 7 opposite.

III.

Ou excepcion de bastardie ne fu nent resceu après la mort le bastard etc.[1]

Vn A. porta sun bref de ael vers B. e dit qe Thomas morust seisi en son demene com de fee ; de T. descendi a Alice com a fille, de Alice a A. qe ore demande.

Hedon. Nous dioms qe Thomas murust seisi après qi mort entra Robert com fiz e heir e continua cele seisine a tote sa vie, après qi mort entra B. etc. E demandoms jugement etc.

Hengham. Après la mort T. entrà une Juliane et après la mort Juliane entra Robert ; e fust bastard.

Touth. A bastarder R. après sa mort ne avendrez mie, qar nous dioms qe Robert fust le fiz Thomas e entra com heir et fut seisi par xl. anz, e en sun tenps vous esteant de plein age sanz estre reclamé. Jugement si vous poez ore bastardie en sa persone alleger. (Ista racio fuit bene allocata.)

Hengham. Il ne entra mie après la mort T. einz fist Juliane. Et prest etc.

Ber. Ceo ne est pas resoun, qar jeo pose qe le chief seignur eust entré, e R. eust purchacé com heir T. assez serreit sun entré accepté com heir, e mesme la manere si Juliane eust tenu les tenemenz en dowere ; mès il dient qe R. entra com fiz e heir e continua par xl anz, est ceo issi, ou noun ?

Et postea il furent nounsuiz etc.

The Record of the Case.

De Banco Rolls, 4 Edw. II., Trinity (No. 187), r. 16d., Essex.

Iohannes Sagor de Lamburne petit uersus Willelmum filium Walteri filii Thome atte Welle unum messuagium duodecim acras terre et quatuor acras prati cum pertinenciis in Lamburne de quibus Thomas atte Welle auus predicti Iohannis, cuius heres ipse est, fuit seisitus in dominico suo ut de feodo die quo obiit etc. Et unde idem Iohannes dicit quod predictus Thomas auus etc. fuit seisitus de predictis tenementis in dominico suo ut de feodo tempore pacis tempore regis E. patris domini regis nunc capiendo inde explecia ad ualenciam etc. et inde obiit seisitus etc. Et de ipso Thoma descendit feodum etc. cuidam Alicie ut filie et heredi etc. Et de ipsa Alicia descendit feodum etc. isti Iohanni qui nunc petit ut filio et heredi etc. Et inde producit sectam etc.

[1] From *Y* (fol. 70 v°).

III.

Where an exception of bastardy was not received after the death of the bastard etc.

One [John] brought his writ of aęl against [William] and said that Thomas died seised in his demesne as of fee, from Thomas descended etc. to Alice as daughter [etc.] and from Alice to [John] who now demands.

Hedon. We say that Thomas died seised, and after his death [Walter] entered as son and heir, and continued this seisin all his life, and after his death this [William] entered etc. And we ask judgment etc.

Hengham. After the death of Thomas one Gillian entered and after the death of Gillian [Walter] entered ; and he was a bastard.

Toudeby. You will not arrive at bastardizing [Walter] after his death, for we tell you that [Walter] was the son of Thomas and entered as heir and was seised for forty years and while you were of full age without being challenged. We ask judgment whether you can now allege bastardy in his person. (This objection was allowed.)

Hengham. He did not enter after the death of Thomas but Gillian entered ; and ready etc.

Bereford C.J. That is no answer ; for I put as a case that the chief lord had entered and [Walter] had acquired[1] from him as heir of Thomas, well enough would his entry as heir be accepted ; and similarly if Gillian had held the tenements in dower etc. But they say that [Walter] entered as son and heir and continued seised for forty years. Is this so or not ?

Afterwards John was non-suited etc.

Translation of the Record.

For the reference, see opposite.

John Sagor of Lambourne demands against William the son of Walter the son of Thomas atte Welle one messuage twelve acres of land and four acres of meadow with the appurtenances in Lambourne of which Thomas atte Welle the grandfather of the aforesaid John, whose heir he is, was seised in his demesne as of fee on the day when he died etc. And whereupon the same John says that the aforesaid Thomas the grandfather etc. was seised of the aforesaid tenements in his demesne as of fee in time of peace in the time of king Edward I. taking thereof the profits to the value etc. and thereof he died seised etc. and from him the said Thomas descended the fee etc. to one Alice as daughter and heiress etc. ; and from her the said Alice descended the fee etc. to this John, who now demands as son and heir etc., and thereof he brings suit etc.

[1] The lord is entitled to take seisin on the death of his tenant, for the purpose of obtaining recognition (*Britton*, ed. 1865, ii. 52).

Record of the Case—*continued.*

Et Willelmus uenit et defendit ius suum quando etc. et dicit quod non debet ei inde ad hoc breue respondere etc. quia dicit quod cum predictus Iohannes per breue suum et narracionem etc. supponat quod predictus Thomas auus etc. fuit seisitus de predictis tenementis etc. et inde obiit seisitus etc. et quod de ipso Thoma descendit feodum etc. predicte Alicie ut filie et heredi etc. idem Willelmus bene cognoscit quod predictus Thomas auus etc. obiit seisitus de predictis tenementis etc. ; set dicit quod idem Thomas habuit quendam filium Walterum nomine, qui post mortem ipsius Thome patris sui intrauit in tenementis illis, ut filius eius et heres, et ea tenuit toto tempore suo et inde obiit seisitus etc. Post cuius mortem iste Willelmus intrauit in eisdem tenementis ut filius ipsius Walteri. Et hoc paratus est uerificare unde petit iudicium etc.

Postea predictus Iohannes non est prosecutus etc. Ideo consideratum est quod predictus Willelmus filius Walteri eat inde sine die et predictus Iohannes et plegii sui de prosequendo in misericordia etc. querantur nomina plegiorum.

2. BRADDEN *v.* HULCOTE.[1]

Quare impedit, ou l'autre partie porta le dreyn presentement devers le pleintif mesme le jour. Et le pleintif se fist plusours titles et fust chacé a respoundre a touz.

Jon de Podicote porta le *quare impedit* vers[2] Willem le fiz Willem etc. Et mesme celuy W. porta le drein presentement devers mesme cely Jon a un meisme jour.

Toud. Sire, nous sumes venuz ceynz a la siwte W. fiz W. en une assise de dreyn presentement. W. est a la barre et rien ne dit devers nous. Jugement etc.

Will. Sire, il ount un *quare impedit* ceynz pendant devers nous etc. Countent yl en lour *quare impedit* adeprimes.

Toud. Nostre *quare impedit* est respounse a vostre dereyn presentement. Par quei etc.

Will. Auxi est nostre dereyn presentement a vostre *quare impedit.*

Ber. a *Will.* Si vous ne voillez autre chose dire, nous demaundrom l'assise. (Et demaunda l'assise.)

Toud. La ley ne soeffre pas qe l'assise veigne avant q'il eient fait lour title en lour dereyn presentement, et qe nous eioms respoundu a lour title.

Ber. Responez donqes.

[1] From *B*, collated with *G* and *M*. This case is wrongly described as a *quare impedit* in the headnotes. [2] devers *G*.

Translation of the Record—*continued.*

And William comes and denies John's right when etc. and says that he ought not to answer him thereof on this writ etc., for he says that whereas the aforesaid John by his writ and count etc. supposes that the aforesaid Thomas the grandfather etc. was seised of the aforesaid tenements etc. and thereof died seised etc. and that from him the said Thomas descended the fee etc. to the aforesaid Alice as daughter and heiress etc. the same William fully acknowledges that the aforesaid Thomas the grandfather etc. died seised of the aforesaid tenements etc.; but he says that the same Thomas had a certain son Walter by name who after the death of this Thomas his father entered into those tenements as his son and heir and held them all his days and thereof died seised etc.; and after his death this William entered into the same tenements as son of this Walter; and this he is ready to aver. Whereupon he asks judgment etc.

Afterwards the aforesaid John sued not etc. Therefore it is adjudged that the aforesaid William the son of Walter go quit thereof without day and that the aforesaid John and his pledges of suing be in mercy etc. Let the names of the pledges be sought.

2. BRADDEN *v.* HULCOTE.

A *quare impedit*, in which the other party brought a *darain presentment* against the plaintiff on the same day. The plaintiff in the assize made several titles for himself, and the party against whom the assize was brought was driven to answer them all.

John of [Hulcote] brought the *quare impedit* against [Geoffrey the son of William of Bradden]; and this same [Geoffrey] brought the *darain presentment* against this same John on the same day.

Toudeby. Sir, we have come here at the suit of [Geoffrey] the son of William in an assize of *darain presentment.* [Geoffrey] is at the bar, and says nothing against us. We ask judgment etc.

Willoughby. Sir, they have a *quare impedit* here now pending against us etc. Let them count in their *quare impedit* first.

Toudeby. Our *quare impedit* is an answer to your *darain presentment.* Therefore etc.

Willoughby. Our *darain presentment* is just as much an answer to your *quare impedit.*

Bereford C.J. to *Willoughby.* If you will not say anything else, we will call the assize. (And he called the assize.)

Toudeby. The law suffers not that the assize come before they have made their title in their *darain presentment*, and we have answered to their title.

Bereford C.J. Answer then.

Toud. Facent lour title.

Herle (pur W.) fit son title[1] *sic* etc. A nous appent a presenter[2] qe W. nostre pere presenta[3] etc. un son clerke W. de B. par noun qe a son presentement[4] etc. et avant luy un altre etc. Et issint prist il son title de v presentements par mesme celuy W. pere mesme celuy W. q'ore est etc.

Toud. A nous appent a presenter etc.[5] par la resoun qe W. nostre auncestre qi heir etc. fut seisi del avoweson avantdit com de fee et de dreit, le quel W. presenta un son clerke R. par noun qe a son presentement etc. en temps le roi Johan etc. De W. descendi le dreit del avoweson avantdit a Roger com a fiz et heir, de R. a J., de J. a J., de J. a J.[6] vers qi ceste assise est ore porté et issint appent a luy a presenter etc.[7] Et la ou il dient qe lour pere presenta etc. *ut supra* en temps etc. un W. de B. [et avaunt ly autres iiij etc., Sire, la vous dioms nous qe en tens etc. de W. de B.][8] etc., nostre auncestre[9] estoit deynz age, par quei cele presentement ne nous doit grever.

Hunt. Quei responez a dreit des autres presentements ?

Toud. A ceo n'avoms mester a respoundre, qe nous sumes hors de point[10] d'assise en tant qe[11] nous dioms qe nostre auncestre[12] estoit deynz age en temps de cel presentement, dount nous entendoms qe quant il fait son title de plusours presentements, nomement, en cas la ou nous pledoms hors du poynt[13] d'assise, assez nous suffit respoundre al un presentement saunz respoundre a toux.

Ber. Ne vous ad il fait son title de v presentements de W. et bien list a luy de prendre son title de celuy q'il ount presenté et de plusours s'il veot. Et auxi largement com il prent son title, responez. Par quei nous agardoms qe vous responez outre.

Toud. issit d'emparler et revynt et dit etc. qe nostre pere estoit deynz age al temps de toux les presentements, prest etc.

Herle. Qe vostre pere estoit de pleyn age al temps qe nostre pere presenta W. de B., prest etc.

Toud. Quei ditez vous en dreit des altres presentements ?

Herle. A ceo n'avoms mester a respoundre qe ceo serroit a prendre sur chesqun[14] presentement un verdit et issint plusours verditz en un mesme plee qe n'est pas soeffrable de ley[15] etc.

Ber. Coment qe vous chacé soiez a respoundre a son title entier-

[1] *Ins.* en le dreyn presentement *M.* [2] *Ins.* par la reson *M.* [3] *Ins.* en temps *G.* *Ins.* en temps le roy Edward pere nostre seignur *M.* [4] *Ins.* fut resceu et institut de evesqe *M.* [5] *Om.* etc. *G, M.* [6] *Om.* de J. a J. *M.* [7] *Om.* etc. *M.* [8] These words are supplied from *G.* [9] pere *M.* [10] poyntz *M.* [11] com *G, M.* [12] pere *M.* [13] poyntz *M.* [14] iescun *G.* [15] *Om.* de ley *G, M.*

Toudeby. Let them make their title.

Herle (for Geoffrey) made his title, thus etc.: It is for us to present because William our father presented etc. one his clerk William of Bukingham by name who on his presentation was admitted etc., and before him he presented another clerk etc. And thus he made his title from five presentations by this same William the father of this same [Geoffrey] who now sues etc.

Toudeby. It is for us to present etc. for the reason that William [of Bodicote[1]] our ancestor, whose heir John is etc., was seised of the advowson aforesaid as of fee and of right; and this William presented one his clerk, [Henry] by name, who on his presentation etc. in the time of king John etc.; from [William] descended the right of the advowson aforesaid to one [John] as son and heir, and from [John] to one [William], and from [William] to one John, and from John to John against whom this assize is now brought; and so it is for John to present etc. And there where they say that their father presented etc. (as above), in time etc. one William of Bukingham [and before him four others etc., we say that in the time etc. of William of Bukingham] etc. our ancestor was within age. Therefore that presentation ought not to harm us.

Huntingdon. What do you answer with regard to the other presentations?

Toudeby. To those we have no need to answer, for we are outside the points of the assize, inasmuch as we say that our ancestor was within age at the time of the presentation of William of Bukingham. Therefore we think that when he makes his title from several presentations, namely [etc.], in a case where we are pleading outside the points of the assize, it is quite sufficient to answer to one presentation without answering to all.

Bereford C.J. Has he not made his title from five presentations by William? He may well take his title from one of those who have presented or from several if he wishes. And as widely as he makes his title, so you must answer. Therefore we award that you answer further.

Toudeby went out to imparl and came back and said: Our father was within age at the time of all the presentations. Ready are we etc.

Herle. That your father was of full age at the time when our father presented William of Bukingham, ready are we etc.

Toudeby. What do you say as regards the other presentations?

Herle. About them we have no need to answer, for that would be to take a verdict on each presentation and so there would be several verdicts on one and the same plea, which is not to be tolerated in law etc.

Bereford C.J. Although you may be driven to answer his title

[1] But the 'Bodicote' of the Record may be a clerical error for 'Hulcote.'

ment en cestuy bref de possessioun et dites qe vostre pere fut dedeynz[1] age al temps de toux les presentements, pur ceo n'ensiwit il mye q'il deyve en repliaunt respoundre a chesqun[2] poynt de vostre respounse, nomement en chesqun[3] bref de dreyn presentement etc. ; qe dreyn presentement et *quare impedit* sount toux jours[4] hors de nature des altres brefs. Mès il vous dit qe vostre pere fut de pleyn age en temps quant son pere presenta W. de B. et ceo suffit en cestuy bref, pur ceo qe vous estes descendu en enqueste hors de poynt d'assise ; par quei nous agardoms l'enqueste sur tiel poynt.

Et nota qe l'assise fut prise in secundo banco ut patet[5] in principio termini Michaelis eodem anno.[6]

The Record of the Case.

De Banco Rolls, 4 Edw. II., Trinity (No. 187), r. 15, Northamptonshire.

Assisa uenit recognitura quis aduocatus tempore pacis presentauit ultimam personam, que mortua est, ad ecclesiam de Estneston que uacat etc., cuius aduocacionem Galfridus de Bradden clamat uersus Iohannem de Hulcote etc. Et unde idem Galfridus dicit quod Willelmus de Bradden pater predicti Galfridi cuius heres ipse est ultimo presentauit ad predictam ecclesiam quemdam magistrum Willelmum de Bukingham clericum suum, qui ad presentacionem suam fuit admissus et institutus etc. tempore pacis tempore E. regis patris regis nunc per cuius mortem predicta ecclesia modo uacat etc. Et dicit quod in uacacione proximo precedente idem Willelmus pater etc. presentauit ad eandem ecclesiam quemdam Radulfum le Mareschal clericum suum, qui ad presentacionem suam fuit admissus etc. tempore pacis tempore eiusdem E. regis patris etc. et in uacacione proxima ante ipsam idem Willelmus pater etc. presentauit ad eandem quemdam Gilebertum de Hay clericum suum qui ad presentacionem suam fuit admissus etc. tempore pacis tempore eiusdem regis patris etc. Et in uacacione proxima ante etc. idem Willelmus pater etc. presentauit ad eandem quemdam Willelmum de Berewedone clericum suum qui ad presentacionem suam fuit admissus etc. tempore pacis tempore eiusdem E. regis patris etc. et in precedenti uacacione proxima ante ipsam idem Willelmus pater etc. presentauit ad eandem ecclesiam quemdam Ricardum de Rothewell, clericum suum, qui ad presentacionem suam fuit admissus etc. tempore pacis tempore eiusdem regis E. patris etc.

Et Iohannes per attornatum suum uenit et dicit quod ad ipsum Iohannem et non ad predictum Galfridum pertinet presentare etc. Dicit enim quod quidam Willelmus de Bodicote aliquo tempore seisitus fuit de aduocacione ecclesie predicte ut de feodo et iure etc. qui ad eandem ecclesiam presentauit quemdam Henricum de Bechampton clericum suum qui ad presentacionem

[1] deynz *G*, *M*. [2] iescun *G*. [3] cesti *G*, *M*. [4] *Om*. jours *M*. [5] *Ins*. supra *G*. [6] *Om*. ut . . . anno *M*.

as a whole in this writ of possession and may say that your father was within age at the time of all these presentations, it would not therefore follow that he ought in replying to answer every point of your answer, especially in a writ of *darain presentment* etc. ; for *darain presentment* and *quare impedit* are always of a different nature from other writs. Now he tells you that your father was of full age at the time when his father presented William of Bukingham ; and that is sufficient in this writ, for you have come down to an inquest outside the points of the assize. Therefore we award that the inquest be taken on this point.

Note.—The assize was taken in the second bench as appears at the beginning of Michaelmas term in the same year.[1]

Translation of the Record.

For the reference, see opposite.

The assize came to make recognition what patron in time of peace presented the last parson, who is dead, to the church of Easton-Neston which is void etc., the advowson of which Geoffrey of Bradden claims against John of Hulcote etc. And whereupon the same Geoffrey says that William of Bradden the father of the aforesaid Geoffrey, whose heir he is, last presented to the aforesaid church one master William of Bukingham, his clerk, who on his presentation was admitted and instituted etc. in time of peace in the time of king Edward I.; and by his death the aforesaid church is now void etc. And he says that on the next preceding vacancy the same William the father etc. presented to the same church one Ralph le Mareschal, his clerk, who on his presentation was admitted etc. in time of peace in the time of king Edward I. ; and on the vacancy next before that the same William the father etc. presented to the same church one Gilbert of Hay his clerk who on his presentation was admitted etc. in time of peace in the time of the same king ; and on the vacancy next before etc. the same William the father etc. presented to the same church one William of Berewedon, his clerk, who on his presentation was admitted etc. in time of peace in the time of king Edward I. ; and on the preceding vacancy next before that the same William the father etc. presented to the same church one Richard of Rothewell his clerk who on his presentation was admitted etc. in time of peace in the time of king Edward I. etc.

And John by his attorney comes and says that it belongs to him John to present etc. and not to the aforesaid Geoffrey ; for he says that one William of Bodicote sometime was seised of the advowson of the church aforesaid as of fee and of right etc. who to the same church presented one Henry of Bechampton his clerk, who on his presentation was admitted and instituted

[1] This appears to be a reference to the similar case of *Malvern* v. *Vernon* heard in the Common Bench in Michaelmas term 4 Edw. II. (vol. iv. pp. 47–52). In spite of the close resemblance between the two cases there can be little doubt that the present case has been correctly identified. The writer of the above note has been deceived partly by the similarity of the two cases and partly by the similarity of the names Pychecote mentioned in the one case and Podicote mentioned in the other. It must, however, be observed that there is no reference in the record of *Bradden* v. *Hulcote* to a *quare impedit* between the same parties.

The Record of the Case—*continued.*

suam fuit admissus et institutus etc. tempore pacis tempore regis Iohannis proaui domini regis nunc etc. Et de ipso Willelmo descendit ius presentandi etc. cuidam Iohanni ut filio et heredi. Et de ipso Iohanne cuidam Willelmo ut filio et heredi etc. Et de ipso Willelmo cuidam Iohanni ut filio et heredi. Et de ipso Iohanne cuidam Iohanni ut filio et heredi. Et de ipso Iohanne descendit ius presentandi etc. isti Iohanni de Hulcote qui nunc etc. Unde bene cognoscit predictas presentaciones factas ad predictam ecclesiam per predictum Willelmum de Bradden patrem etc. de predictis clericis suis etc. set dicit quod presentaciones ille ei preiudicare non debent etc. Dicit enim quod predictus Iohannes pater predicti Iohannis de Hulcote tempore presentacionum illarum fuit infra etatem etc. Et petit iudicium etc.

Et Galfridus dicit quod predictus Iohannes pater ipsius Iohannis de Hulcote tempore quo predictus Willelmus de Bradden pater ipsius Galfridi ultimo presentauit ad predictam ecclesiam predictum magistrum Willelmum de Bukingham clericum suum per cuius mortem predicta ecclesia modo uacat ut predictum est, fuit plene etatis etc. et non infra etatem sicut predictus Iohannes dicit. Et hoc petit quod inquiratur etc. Et predictus Iohannes similiter etc. Ideo capiatur iurata loco assise etc.

Et iuratores de consensu parcium electi dicunt super sacramentum suum quod predictus Iohannes de Hulcote pater ipsius Iohannis de Hulcote tempore quo predictus Willelmus de Bradden presentauit ad predictam ecclesiam predictum magistrum Willelmum de Bukingham fuit plene etatis Et quod ecclesia illa ualet per annum uiginti libras. Ideo consideratum est quod predictus Galfridus de Bradden recuperet inde presentacionem suam uersus predictum Iohannem et habeat breue episcopo Lincolniensi quod non obstante reclamacione predicti Iohannis ad presentacionem predicti Galfridi ad predictam ecclesiam idoneam personam admittat et quod recuperet uersus eum ualorem medietatis ecclesie predicte uidelicet decem libras eo quod tempus semestre nondum elabitur etc. Et Iohannes in misericordia etc. Et super hoc uenit predictus Galfridus et per statutum elegit sibi liberari omnia bona etc. preter boues etc. et similiter medietatem terrarum etc. tenendam etc. Ideo habeat breue per statutum etc. et qualiter scire faciat hic in octabis sancti Michaelis etc.

Dampna decem libre unde xl sol. clericis.

3. RANDOLF *v.* THE ABBOT OF HAYLES.

I.[1]

Dette demandé vers l'abbé del achate le moigne, et l'abbé fust lyé par le fet son moigne.

Johan Randolf porta son bref de dette devers l'abbé de H.[2] et demaunda C. livres par la reson q'il achata par un Johan son moigne

[1] From *B*, collated with *G* and *M*. There is a report of this case in *R*, but it is much damaged. [2] Hawele *M*.

Translation of the Record—*continued.*

etc. in time of peace in the time of king John the great-grandfather of the lord king who now is, and from this William descended the right of presenting etc. to one John as son and heir, and from this John to one William as son and heir etc., and from this William to one John as son and heir, and from this John to one John as son and heir, and from this John descended the right of presenting etc. to this John of Hulcote who now etc. Whereupon he well acknowledges the aforesaid presentations made to the aforesaid church by the aforesaid William of Bradden the father etc. of his clerks aforesaid, but he says that these presentations ought not to prejudice him etc., for he says that the aforesaid John the father of the aforesaid John of Hulcote at the time of those presentations was within age etc. And he asks judgment etc.

And Geoffrey says that the aforesaid John the father of this John of Hulcote at the time when the aforesaid William of Bradden the father of him Geoffrey last presented to the aforesaid church the aforesaid master William of Bukingham, his clerk, by whose death the aforesaid church is now vacant as is aforesaid, was of full age etc. and not within age as the aforesaid John says. And of this he asks that inquiry may be made etc. And the aforesaid John likewise. Therefore let a jury be taken in lieu of the assize etc.

And the jurors chosen by the consent of the parties say upon their oath that the aforesaid John of Hulcote the father of this John of Hulcote at the time when the aforesaid William of Bradden presented the aforesaid master William of Bukingham to the church aforesaid was of full age; and that that church is worth twenty pounds a year. Therefore it is awarded that the aforesaid Geoffrey of Bradden recover his presentation thereof against the aforesaid John; and let him have a writ to the bishop of Lincoln that notwithstanding the claim of the aforesaid John he admit on the presentation of the aforesaid Geoffrey a fit parson to the aforesaid church; and that Geoffrey recover against him the value of a moiety of the aforesaid church, to wit, ten pounds, on the ground that the period of six months has not yet elapsed etc. And let John be in mercy etc. And upon this comes the aforesaid Geoffrey, and by the statute elects to have delivered to him all the goods etc. except oxen etc. and likewise a moiety of the lands etc. to be held etc. Therefore let him have a writ by the statute [1] etc.; and let him cause to be known here on the octave of St. Michael how etc.

Damages ten pounds, whereof forty shillings to the clerks.

3. RANDOLF *v.* THE ABBOT OF HAYLES.[2]

I.

A debt demanded against an abbot on the purchase of his monk. The abbot was bound by the deed of his monk.

John Randolf brought his writ of debt against the abbot of Hayles and demanded one hundred pounds because the abbot purchased by

[1] Statutum Westm. II. 18 Edw. I. c. xviii.

[2] This is *Fitz.* Book i. fol. 279, Dette, No. 168.

xj saks de leyne pur C. livres a paier etc. la quele leyne devynt al profit de la mesoun.

Toud. demaunda ceo q'il avoit de la dette.

Scrop. Vees yci le fait Johan vostre moigne qe tesmoine etc., et ove ceo nous voloms averer qe la leyne devynt al profit de la mesoun etc.

Toud. N'entendoms mye q'il puisse par ceo fait rienz[1] demaunder vers nous desicom il ne poent dire qe ceo est nostre fait ne nul de nos predecessours ; qar si nous[2] vousissoms[3] dedire nous ne serroms pas resceu, qe nous sumes tut estrange a ceo fait.

Ber. Ne fut il vostre moigne, qe achata la leyne a proffit de la meison ? et les leynes devyndrent al profit de la meison ; et ceo veot il averer. Pur quei ne devetz respoundre ? qe jeo pose qe jeo maundasse moun garzon a marché[4] pur achater mes[5] marchandises diversez especeriez et autre choses a paier a un certeyn jour pur xx livres[6] et il les eust resceu et porté a moy etc. et il venist[7] et[8] demaundast les xx livres de moy et jeo demaundasse ceo q'il out de la dette et il meyst[9] avant le fait moun vallet et voleit averer qe les bienz devyndrent a mon proffit, entendez vous q'il ne recoverast devers moy ? (*quasi diceret*, Sic).

Toud. vyt bien q'il covendreit q'il respoigne al fait[10] le moigne et al averement et fit son client acorder. Et sic etc.

II.[11]

Ou l'abbé respont pur le contrat son moygne saunz especiauté etc.

Jon Randol porta son bref de dette vers l'abbé de Hayles et ly demanda C livres par la reson qe il achata de ly xj sakes de leyne par un Johan le Blound son moygne le jour de la Maudelein l'an etc. in S. en le counté de Viltes' a paier a la feste seint Matheu prochein swyant ; a quel jour il ne paa nul dener ne uncore ne fait as damages etc.

Stonouere. Le abbé defend etc. et n'entendom mie qe a cesti bref deive estre respondu, qar il ad counté qe le contrat se prit en le counté de Wilts' et le bref original va au viconte de Gloucestre. E demandoms jugement de cesti bref etc.

Herui. En auncien tems home soleit en teu cas abatre le bref de dette, et ore veez tote en jour qe bref de dette par tel excepcion ne abate mie, par quei dites autre chose.

[1] nul dette *M.* [2] *For* si nous, *subs.* le *M.* [3] veusisoms *R.* [4] la mercerie *G, M, R.* [5] *Om.* mes *R.* *Subs.* merz *G.* [6] *Om.* pur xx liures *M, R.* [7] *Om.* etc. et il venist *M.* [8] *Ins.* le prodhom *M.* [9] moyt *G*, mist *R.* [10] *Ins.* et al verrement *G, R* ; et l'averement *M.* [11] From *Y* (fol. 242 vo).

one John his monk eleven sacks of wool for one hundred pounds to be paid etc. which wool came into the use of his house.

Toudeby asked what he had of the debt.

Scrope. See here the deed of John your monk which witnesses etc., and with this we will aver that the wool came into the use of the house etc.

Toudeby. We do not think that he can by this deed demand anything against us, seeing that he cannot say that it is the deed either of us or of any of our predecessors, for if we wished to deny it we should not be received, for we are entire strangers to this deed.

Bereford C.J. Was he not your monk who bought the wool for the use of the house and did not the wool come into the use of the house? He wishes to aver this. Why should you not answer? Suppose I were to send my servant to market to buy my merchandise, divers spices, and other things for twenty pounds to be paid on a certain day, and he received the goods and brought them to me, and suppose the merchant came and asked me for the twenty pounds and I asked him what he had in proof of the debt, and he put forward the deed of my servant, and wished to aver that the goods came into my use, do you think that he would not recover from me? (*implying that he would*).

Toudeby saw well that he must answer the monk's deed and the averment, and made his client settle.[1] And so etc.

II.

A case in which an abbot answers for the contract of his monk without specialty etc.

John Randolf brought his writ of debt against the abbot of Hayles and demanded from him one hundred pounds, because he bought from him eleven sacks of wool through John [of Hardepury] his monk on the day of St. Mary Magdalene in the year etc. at Sevenhampton in the county of Wilts, the hundred pounds to be paid on the feast of St. Mathew next following. On that day he paid not one penny, nor has he yet paid, to the damage etc.

Stonor. The abbot denies etc. We do not think that he should be answered on this writ; for he has counted that the contract was made in the county of Wilts; and the original writ went to the sheriff of Gloucester. We ask judgment of this writ etc.

Stanton J. In old days the writ of debt in such a case as this used to be abated; but now you see every day that a writ of debt is not abated by such an exception. Therefore say something else.

[1] But the Record shows that the case was adjourned till the following term.

Malm. Quei unt il de la dette?

Westcot. Swite bon, e qe les leins vindrent en profit del abbé et de sa meson.

Malm. Chescon achate e vent deit estre fait entre certeinz persounz qe sunt a la dette liez ; e l'abbé veut averer q'il achata unkes nules leynes etc.

West. Nous avoms dit qe l'achate se fit par un frere Johan vostre moyng par ceo fet qe ci est. (E mit le fet le moyngne avant a la court qe ceo tesmoygne qe le moygne avoit achaté al oeps la mesoun celes leines.)

Malm. Si le contrat nostre moyng nous dut lier, il covensit aforce q'il ust garraunt par especiauté a tel contrat faire, mès ore dyoms nous qe cel moynge est ore mort ; e il ne mostre nul especiauté qe fut garraunt au moynge a cel contrat fere. E demandoms jugement etc.

Westc. Il fut moyngne de office, a queux poer est doné de fere contrats en prou de la mesoun.

Ber. Si vous mandez vostre valet au marché pur achater vitaille com manger ou beyre, e les veygnent a vostre hostel e seient despendu en vos usis, ne n'est ceo mie reson qe vous seiez tenuz a la quitaunce (*quasi diceret*, Sic). E d'autrepart si vous maundez vostre seneschal a un faire e il achate draps et espiceries a vostre oeps e vous les despendez n'est ce mie reson qe vous seez tenu a l'aquitaunce au marchaunt de ses deners (*quasi diceret*, Sic).

Malm. Il nous ne lyout mie auxi fort com vous fetes, qar en tot Wiltes' n'avoms nous mesoun.

Ber. Responez a ceo q'il dyent, qe les leins devinderent a vostre profit etc.

Hervi a *Malm.* Il vous sovent ben del abbé de Seleby en aunciene cas. Et Sir Henri icy fut partie etc.

Malm. Vous dites verité, mès il ne prit renz etc.

Hervi. Mès, a noun Deu, l'enqueste se joint.

Malm. Nous enparlerom etc.

Frisq. Vous avez ben entendu coment il unt demandé ceste dette e en prove de la dette il tendent swite bone a ceo. Vous respond le abbé par sun attorné e dit qe nul dener ne deit e prest est a defendre encountre ly e encountre sa suite.

Herle. A ceo n'avendrez mie, kar nous avoms dit qe les leynes devindrent au profit de la mesoun e prest del averer.

Malberthorpe. What have they of the debt?

Westcote. Good suit, and [we say] that the wool came into the use of the abbot and his house.

Malberthorpe. Every purchase and sale ought to be made between certain persons who are bound to the debt. The abbot wishes to aver that he never purchased any wool etc.

Westcote. We have said that the purchase was made by one Brother John your monk by this deed which is here. (And he put the deed of the monk before the court, and it witnessed that the monk had bought this wool for the use of the house.)

Malberthorpe. If the contract of our monk is to bind us, it is very necessary that he should have a warrant by specialty to make the contract; but we say that this monk is now dead; and no specialty is shown which was a warrant for the monk to make the contract. We ask judgment etc.

Westcote. He was a monk with an office, to whom power was given to make contracts for the use of the house.

Bereford C.J. If you send your yeoman to the market to buy victuals to eat and drink; and they come to your house and are consumed in your use, is this not a reason for your being bound to satisfy the debt? (*implying that it was a reason*). And besides if you send your steward to a fair, and he buys cloths and spices for your use, and you consume them, is this not a reason that you should be bound to satisfy the merchant with the money in payment? (*implying that it was a reason*).

Malberthorpe. The contract did not bind us as strongly as you say; for in all Wiltshire we have no house.

Bereford C.J. Answer their statement that the wool came into your use etc.

Stanton J. (to *Malberthorpe*). You remember well the abbot of Selby in the old case. Sir Henry here was a party etc.[1]

Malberthorpe. That is true; but he took nothing etc.

Stanton J. But, by God, an inquest was joined.

Malberthorpe. We will imparl etc.

Friskeney. You have heard how they have demanded this debt, and in proof of the debt they offer good suit for it. The abbot answers you by his attorney and says that not a penny does he owe and ready is he to defend against him and against his suit.

Herle. You will not come to that, for we have said that the wool came into the use of the house, and ready are we to aver it.

[1] This case has not been identified. By Sir Henry he probably meant *Scrope J.*

Ber. Il vous unt demandé ceo qe vous avez de la dette et vous ne mostrez ren qe swite bone, pur quei n'avendrent il a sa ley etc.?

The Record of the Case.

De Banco Rolls, 4 Edw. II., Trinity (No. 187), r. 57d., Gloucestershire.

Abbas de Hayles in misericordia pro pluribus defaltis etc.

Idem abbas summonitus fuit ad respondendum Iohanni Randolf de placito quod reddat ei centum libras quas ei debet et iniuste detinet etc. Et unde idem Iohannes per attornatum suum dicit quod cum ipse apud Deuenhampton' in comitatu Wylt' die Martis in festo sancte Marie Magdalene anno domini regis nunc tercio uendidisset cuidam Iohanni de Hardepury commonacho predicti abbatis et procuratori ipsius abbatis et domus sue predicte undecim saccos lane in presencia Iacobi Gryndewell Willelmi Dybner Laurencii le Eyr Willelmi atte Mulle Iohannis Whelyfedde Iohannis Bacoun Ricardi Baroun et Willelmi de Hauyngdone et aliorum[1] pro predictis centum libris ei soluendis die sancti Mathei apostoli proximo sequenti, que quidem lane predicto procuratori sic uendite et recepte ad opus ipsius abbatis deuenerunt ad manus ipsius abbatis et commodum domus sue predicte Idem abbas denarios illos eidem Iohanni ad diem illum non reddidit, set illos ei hactenus reddere contradixit, licet sepius fuisset requisitus etc. et adhuc contradicit etc.; unde dicit quod deterioratus est et dampnum habet ad ualenciam quadraginta librarum etc. Et inde producit sectam etc.

Et abbas per attornatum suum uenit. Et datus est eis dies hic a die sancti Michaelis in xv dies per iusticiarios prece parcium sine essonio etc.

4. DE LA CHAUMBRE *v.* THE BISHOP OF LONDON.

I.[2]

Dette ou executours furent empledez e dyseyent q'il aveynt un co-executour qe fut mort et avoit executour nent nomé en bref etc.

Un Adam porta son bref de dette vers l'evesqe de Loundres et ij autres executours du testament un R. jadis evesqe de Loundres.

[1] MS. *aliis.* [2] From *B*, collated with *G* and *M*. The headnote is from *G*.

Bereford C.J. They have asked what you have of the debt, and you have shown nothing but good suit; why should they not come to their law etc.?

Translation of the Record.

For the reference, see opposite.

The abbot of Hayles in mercy for several defaults etc.

The same abbot was summoned to answer John Randolf on a plea that he render to him one hundred pounds which he owes to him and wrongfully detains etc. And whereupon the same John by his attorney says that (whereas he at Devenhampton [1] in the county of Wilts on Tuesday [2] the feast of St. Mary Magdalene 3 Edw. II. sold to one John of Hardepury, a fellow monk of the aforesaid abbot and the steward of him and his house aforesaid, eleven sacks of wool in the presence of James Gryndwell, William Dybner, Lawrence Le Eyr, William atte Mulle, John Whelyfedd, John Bacoun, Richard Baroun, and William of Havyngdone and others for the aforesaid one hundred pounds to be paid to him on the day [3] of St. Mathew the apostle next following, which wool to the aforesaid steward, so sold and received for the use of him the said abbot came into the hands of him the said abbot and for the advantage of his house aforesaid) the same abbot rendered not those moneys to the same John at that day, but has hitherto refused to render them to him although he has frequently been asked and he still refuses etc. Whereupon he says that he is injured and has damage to the value of forty pounds etc.; and thereof he brings suit etc.

And the abbot by his attorney comes. And a day is given them here by the justices, the quindene of St. Michael at the prayer of the parties without essoin etc.

4. DE LA CHAUMBRE *v.* THE BISHOP OF LONDON.[4]

I.

Debt, where the executors were impleaded and they said that they had a co-executor who was dead, and he had executors not named in the writ etc.

One [Simon] brought his writ of debt against the bishop of London and two other executors of the will of Richard lately bishop of London.

[1] This is apparently an error for Sevenhampton.

[2] 22 July 1309.

[3] 21 September 1309.

[4] The accounts of the executors of the bishop, Richard of Gravesend, and a copy of his will, both of which have fortunately been preserved, are printed in *The Publications of the Camden Society*, Second Series, vol. x. They make the reports of this difficult case intelligible. It appears that the bishop appointed as his executors the three persons named in the Record of this case (see below), namely Ralph of Baldock, afterwards bishop of London, Richard of Newport, and Stephen of Gravesend, and also one John of Bedford, archdeacon of London,

Herle. Yl y avoit un coexecutour ove nous qe[1] administra et morust[2]; et avoit a noun J., qe fit ses executours,[3] les queux administrerent les biens mesme cestuy Johan et les biens l'evesqe, nent nomé en ceo bref. Jugement du bref.

Hedon. Quant a les ij nous vous dioms q'il n'admynistrerent unqes, prest etc.

Pass. Quei responez vous quant a les iij ? si jeo ey un, assez moy suffit qe n'est pas nomé pur bref abatre.

Hedon. Quant a[4] deux nous vous dioms q'il ne furent[5] unqes executours, prest etc. Jugement si nostre etc.

Herle. Par l'administracioun, si doit homme conustre qi est executour et qi ne mye. Et vous dioms qe les biens l'evesqe devyndrent auxi bien en lour possessioun com en le nostre[6] et auxi avant ount admynistracioun. Jugement.

Hedon. Depuys qe vous ne poetz dire q'il furent faitz executours par le testatour,[7] jugement. Mesqe l'administracioun[8] fut baillé par les ordinaries ceo ne fait pas lour bref malvoix, q'il ne sount mye executours.

Herle. Dount serroient les autres executours a graunt meschief, et issi ne[9] serroit nul bref porté vers eux, la ou par cas toux les bienz devindrent[10] a lour administracioun.

Hedon.[11] Vous auretz bref al evesqe auxi com statut vous doune.

Herle. Ne[12] put estre q'il murust nent intestat ne les bienz devyndrent en sa possessioun etc.

Et fut dit qe *Hedon* dut avoir demaundé ceo q'il avoient de ceo, q'il avoient autres executours[13] nent nomé etc. et issi les avoir chacé d'avoir moustré testament etc.

[1] et *G.* *Om.* qe *M.* [2] *Ins.* avaunt *M.* [3] *For* et avoit . . . executours *subs.* Et Iohan avoit fet ses executors et les noma com executors *M.* [4] *Ins.* lez *M.* [5] firent *B.* *For* q'il . . . furent, *subs.* q'il n'estes (*sic*) fet *M.* [6] vostre *G.* [7] test' *B.* testatour *G, M.* [8] *Ins.* lur *G.* [9] *Om.* ne *M.* [10] *Ins.* tut *M.* [11] *Herle B, G.* *Hedon M.* [12] Ceo ne *G, M.* [13] *Ins.* qe avoient executours *G, M.*

Herle. There was a co-executor with us who administered and died, and his name was John [of Bedford], and he appointed his executors who administered the goods of this same John and the goods of the bishop; and they are not named in the writ. We ask judgment of the writ.

Hedon. As to two executors [of John] we tell you that they never administered. Ready are we etc.

Passeley. What do you answer with respect to the three? If I have one, who is not named, that is sufficient for me to abate the writ.

Hedon. As to two of them, we tell you that they never were executors. Ready etc. We ask judgment whether our etc.

Herle. By the administration it should be known who is an executor and who is not. And we tell you that the goods of the bishop came as much into the possession [of the executors of John] as into our possession and just as much had they administration. Judgment.

Hedon. Since you cannot say that they were made executors by the testator, we ask judgment. Even if the administration was delivered by the ordinaries, this does not make the writ bad, for they are not executors.

Herle. Then there would be a great hardship for the other executors; and in such a case no writ could be brought against these persons where perhaps all the goods came into their possession.

[*Hedon.*] You would have a writ to the bishop such as the statute[1] gives you.

Herle. That cannot be, for he did not die intestate, and the goods did not come into their possession.

And it was said that *Hedon* should have asked what they had in evidence of this, that there were other executors who had executors not named etc., and so have driven them to show the will etc.

who after acting in the administration of the estate seems to have died before the date of these proceedings, probably in 1309. Probate, however, was not granted to Ralph of Baldock, one of the executors, though it would appear from the Record (see below) that he acted in the administration (*Ibidem*, p. 109). A certain William of Cotingham, the attorney of the deceased bishop, is known to have acted as his executor, for the accounts of his executors contain these words: Willelmo de Cotyngham attornato episcopi defuncti et subsequenter executori testamenti eius (*Ibidem*, p. 107). William was probably one of five executors of the will of John of Bedford. The translation of the reports of this case is based upon the supposition that John of Bedford appointed five executors of his will, but that three only of these executors, of whom William of Cotingham was one, acted in the administration of his estate. It appears from the Record that Cotingham was the attorney of the executors in this case. For a case in which two of the bishop's executors were plaintiffs in an action of debt, *see Y*, fol. 234 v°.

[1] Statute Westm. II. 13 Edw. I. c. 19.

II.[1]

Bref de dette fu porté vers un Richard executour[2] etc. l'evesqe de Loundres e demaunda certeyn summe d'argent e dist q'il appresta al evesqe qi executour etc.

Pass. Sire, nous vous dioms qe l'evesqe fit un autre executour[3] en pleine vie nomement etc. e noma V executours. E demaundoms jugement si sanz eux devoms respondre.

Ber. Vous vous devetz dire plus, qe eux administreront e nent nomez el bref, jugement.[4]

Hedon. Q'il ne les fist ses executours, prest etc.

Ber. Qi biens administreront il ou[5] l'evesqe ou[5] Johan ?

Pass. Sire, les biens Johan.

Ber. Il covent dire qe après la mort Johan les biens l'evesqe devindrent en les mayns ceux qe vous dites qe ne sont pas nomez a ceo qe vostre excepcion seit bone[6]; qe mesqe[7] eux eient administracion les biens Johan qi executours il sont, sans qe les biens l'evesqe ussent devenutz en lour mayns.[8]

Hedon. Sire, nous vous dioms qe quant as deux qe ne sont my[9] nomez, qe unqes ne[10] administreront, prest etc. Et quant a les iij nous vous dioms qe Johan ne les fist unqes executours, prest etc.

Pass. A ceo ne devez estre resceu qe nous ne[11] les dioms estre executours Johan e administreront e vous ne les severez par divers respons, par quei il covent respondre en la manere come[12] nous la pernoms.

Ber. Il covent respondre qe eux ne furent donqes[13] faites executours ne administreront.

Hedon ut prius.

Pass. Nous vous dirroms nostre fait ; qe nous ne poms dedire qe eux ne furent faites[14] executours mès unqes administreront e vous dioms qe l'evesqe bailla l'administracion a iij en defaute des ij.

Herle. E nous jugement, del hure qe les ij qe furent faites executours,[15] ne administreront pas, si non-nomer de eux deive nostre bref abatre. Et quant a les iij si par my lour administracion qe ne furent pas faites executours par le mort si lour noun-nomer deyve nostre bref abatre.

[1] From *D*, collated with *P*. [2] vers v executours *P*. [3] *For* qe . . . executour, *subs.* qe un autre fust executour, c'est a saver Johan de B. qe ad executours *P*. [4] This word occurs here in both texts. It was probably inserted in error. See note 8 below. [5] *Ins.* les biens *P*. [6] done *D*. [7] nesqe *D*. [8] The words ' prest est ' are here inserted, apparently in error, in *D*. They have been erased in *P*. [9] *Om.* ne . . . my *P*. [10] ni *D* ; ne *P*. [11] *Om.* ne *P*. [12] qe *P*. [13] unques *P*. [14] fat *D*. *Om.* faites *P*. [15] *Ins.* e *D*.

II.

A writ of debt was brought against one Richard [and two others] executors etc. of the bishop of London, and the plaintiff demanded a certain sum of money and said that he lent it to the bishop, whose executors they are.

Passeley. Sir, we tell you that the bishop made another executor [who himself appointed other executors] now living, namely etc.; and he named five executors. And we ask judgment, if we ought to answer without them.

Bereford C.J. You ought to say more, that they administered, and are not named in the writ [and then ask] judgment.

Hedon. That he did not make them his executors ready are we etc.

Bereford C.J. Whose goods did they administer, the bishop's or John's?

Passeley. Sir, the goods of John.

Bereford C.J. You must say that after the death of John the goods of the bishop came into the hands of those, whom you say are not named, if your exception is to be good; for even though they had administration of the goods of John whose executors etc. they are, unless the goods of the bishop came into their hands [your exception is bad].

Hedon. Sir, we tell you, as regards two of the executors who are not named, that they never administered. Ready are we etc. And as to the three we say that John never made them his executors. Ready etc.

Passeley. You ought not to be received to say that, for we say that they were executors of John and administered; and you cannot sever them by different answers. You must therefore answer in the form in which we make our assertion.

Bereford C.J. You must answer that [the three] were [never] made executors and they never administered.

Hedon (as before).

Passeley. We will tell you the facts of our case. We cannot deny that [the two] were made executors but they administered; and we say that the ordinary delivered the administration to the three in default of these two.

[*Hedon*] And we ask judgment, whether seeing that the two who were made executors [of John] did not administer, their not having been named ought to abate our writ. And as regards the three who were not made executors by the deceased [bishop], we ask whether by reason of their administration their not having been named ought to abate our writ.

Ber. Responez al bref; qe par nule leye les iij ne serront jammes chacez a respondre com executours en tiel cas.

Herle. Nous voloms averrer qe xx livres de biens devyndront en les mayns les iij des biens l'evesqe e si nous[1] seioms eidé en ceo cas ceo est meschief en ley qe ne put estre assoutz.

Et au dereyn fu le bref agardé bon etc.

[*Ber.*][2] par quei nous agardoms qe vous diez outre.

Herle. Quei avez de nous lier a ceste dette etc. ?

Hedon. Veetz ci le fait vostre testatour par quel il est obligé etc.

Herle. Nent son fait prest etc.

Et les autres le reverse etc.

The Record of the Case.

De Banco Rolls, 4 Edw. II., Trinity (No. 187), r. 209d., Sussex.

Radulfus episcopus Londoniensis magister Ricardus de Neuport et magister Stephanus de Graueshende executores testamenti Ricardi nuper episcopi Londoniensis summoniti fuerunt ad respondendum Simoni de la Chaumbre de placito quod reddant ei sexaginta et duodecim libras quas ei iniuste detinent etc. Et unde idem Simon per attornatum suum dicit quod cum predictus Ricardus nuper episcopus etc. cuius executores ipsi sunt anno domini M.CC.LXXXVIII et regni regis Edwardi patris domini regis nunc sextodecimo apud Lodyrsworth obligasset se teneri predicto Simoni in predictis sexaginta et duodecim libris ab ipso Simone mutuo habitis et receptis soluendis eidem Simoni ad festum sancti Botulphi in tribus annis proximo sequentibus etc. Idem Ricardus episcopus etc. in uita sua predictum debitum non reddidit etc. et predicti executores post mortem eiusdem, licet sepius requisiti etc. hucusque reddere contradixerunt etc. Unde dicit quod deterioratus est et dampnum habet ad ualenciam quadraginta librarum. Et inde producit sectam etc. Et profert scriptum ipsius Ricardi quondam episcopi etc. quod predictum debitum testatur etc.

Et Radulfus episcopus et alii executores per Willelmum de Cotenham attornatum suum ueniunt et defendunt uim et iniuriam quando etc. Et bene defendunt quod predictum scriptum non est factum predicti Ricardi quondam episcopi Londoniensis etc. Et de hoc ponunt se super patriam. Et predictus Simon similiter etc. Ideo preceptum est uicecomiti quod uenire faciat hic a die sancti Martini in xv dies xij etc. per quos etc. et qui nec etc. ad recognoscendum etc. quia tam etc. et nulli testes etc. Et predictum scriptum dedictum etc. remanet in custodia I. Bacun clerici regis etc.

Postea continuato processu hinc inde usque in octabis Purificacionis beate Marie anno regni regis nunc sexto uenerunt tam predictus Simon in propria persona sua quam predicti executores per attornatum suum in curia hic.

[1] *Ins.* ne *P.* [2] There seems to be an omission here in both manuscripts.

Bereford C.J. Answer the writ, for by no law would the three ever be driven to answer as executors in such a case as this.

Herle. We will aver that twenty pounds of the goods of the bishop came into the hands of the three, and if we are [not] aided in this case it is a hardship in law which cannot be excused.

And in the end the writ was awarded good etc.

Bereford C.J. Therefore we award that you say something further.

Herle. What have you to bind us to this debt etc.?

Hedon. See here the deed of your testator by which he is bound etc.

Herle. Not his deed. Ready etc.

And the others to the contrary etc.

Translation of the Record.

For the reference, see opposite.

Ralph bishop of London, master Richard of Neuport and master Stephen of Graveshende executors of the will of Richard lately bishop of London, were summoned to answer Simon de la Chaumbre on a plea that they render to him seventy-two pounds which they wrongfully detain from him etc. And whereupon the same Simon by his attorney says that, whereas the aforesaid Richard lately bishop etc. whose executors they themselves are in the year of our Lord 1288 and of king Edward I. the sixteenth at Lodsworth bound himself to be holden to the aforesaid Simon in the aforesaid seventy-two pounds had and received from the said Simon as a loan to be paid to the same Simon on the feast of St. Botolph[1] in the third year next following, the same Richard the bishop etc. in his life time rendered not the aforesaid debt etc. and the aforesaid executors after his death though frequently requested etc. heretofore have refused to render it etc. Whereupon he says that he is injured and has damage to the value of forty pounds; and thereof he brings suit etc. And he proffers the writing of him the said Richard sometime bishop which witnesses the aforesaid debt etc.

And Ralph the bishop and the other executors by William of Cotenham their attorney come and they deny tort and force when etc. and well they deny that the said writing is the deed of the aforesaid Richard sometime bishop of London etc. and of this they put themselves upon the country. And the aforesaid Simon likewise etc. Therefore the sheriff is ordered to cause to come here on the quindene of St. Martin, twelve etc. by whom etc. and who neither etc. to make recognition etc. because as well etc. and no witnesses etc. And the aforesaid writing which is denied etc. remains in the custody of J. Bacun the king's clerk etc.

Afterwards process having been continued on either side until the octave of the Purification 6 Edw. II. came as well the aforesaid Simon in his own person as the aforesaid executors by their attorney here into court.

[1] 17 June 1290.

The Record of the Case—*continued.*

Et idem Simon cognoscit quod predicti executores satisfecerunt ei de predicto debito et quod ipse non uult amplius sequi uersus eos predictum placitum. Ideo consideratum est quod predictus Simon nichil capiat per breue istud set sit in misericordia pro falso clamore. Et predicti executores eant inde sine die etc.

Et sciendum quod predictum scriptum cancellatur hic in curia etc. Et liberatur attornato predictorum executorum hic in curia.

5. UPTON *v.* MILTON.

I.[1]

Nota de debito.

Une dette fut demaundé. Le defendaunt mist avaunt l'aquitaunce. Le pleintif la dedit et avoint jour pur fere venir l'enqueste as utaves de la Trinité. A quel jour l'enquest fut prest. Le defendaunt fut solemnement[2] demaundé et ne vint pas, par quei fut agardé qe le pleintif recovera sa demaunde et ses damages taxez par la court a C. souz. Et l'enqueste ne fut pas pris par la defaute le defendaunt solonc statut. Et est mirum.[3]

II.[4]

Nota. Un home porta soun bref de dette et mist avant un escrit qe testmoigna la dette.

Le defendant mist avant une acquitance qe testmoigna soute, le quele le pleyntif dedit. Commaundé fut etc. q'il feit[5] venir pays a lez utauz de la Trinité. A quel jour lez parties fuerent demaundez ; et continuerent tanqe le defendant ne vynt point, par quei fut agardé qe le demandant recovre.

Nota. Si jeo conusse une dette tut boute jeo[6] avant escrit en court qe testmoigne la soute, si le fet qe jeo mette avant seit dedit, si[7] jeo ne sewe qe le fet seit trié, le jugement se fra solom la conissance.

[1] From *M.* The facts might suggest that this case is identical with *Upton* v. *Milton*, for the record of which see *Year Books Series*, vi. 157. In view, however, of the fourth report, printed below, in which the names of the parties are given, possibly with some resemblance to accuracy, this identification must be regarded as very doubtful. [2] soulement *M.* [3] The word *quere* is written in the margin of the MS. opposite this case. [4] From *C* collated with *Q* and *T*. [5] feist *Q*. [6] il *Q*. [7] et *T*

Translation of the Record—*continued.*

And the same Simon acknowledges that the aforesaid executors had satisfied him of the aforesaid debt and that he wishes no more to sue the aforesaid plea against them. Therefore it is awarded that the aforesaid Simon take nothing by this writ, but be in mercy for a false claim, and let the aforesaid executors go [quit] thereof without day etc.

And be it known that the aforesaid writing is cancelled here in court etc., and delivered to the attorney of the aforesaid executors here in court.

5. UPTON *v.* MILTON.

I.

Note on debt.

A debt was demanded. The defendant put forward the acquittance. The plaintiff denied it; and the parties had a day for the inquest to come, to wit, the octave of Trinity. On that day the inquest was ready. The defendant was formally[1] called, and he came not, whereupon it was awarded that the plaintiff recover his demand and his damages were taxed by the court at one hundred shillings. And the inquest was not taken upon the default of the defendant under the statute.[2] This is remarkable.

II.

Note.—A man brought his writ of debt and put forward a writing which witnessed the debt.

The defendant put forward an acquittance which witnessed payment, and this the plaintiff denied. It was ordered etc. that an inquest should come on the octave of Trinity. At that day the parties were called; and process was continued until a day when the defendant did not come, and thereupon it was awarded that the demandant should recover.

Note.—If I acknowledge a debt, though I put before the court a writing which witnesses payment, if the deed which I put forward be denied, and I do not sue to have the deed tried, judgment will be according to my acknowledgment.

[1] The word 'soulement' in the text seems to be an error for 'solempnement.'

[2] Statute of Marlborough, 52 Hen. III. c. 13.

III.[1]

Un bref de dette fut porté vers un home qe demaunda ceo q'il avoit de la dette. Il mit avaunt soun fet le quel il conust; et [le defendaunt] mit avaunt aquitaunce la quele le demaundant dedit. Et furent a pays. Le pays fut somouné. E pur ceo qe le defendaunt ne vint pas après l'enqueste joynte mès fit defaute ou il dut aver suy ceo q'il mist avaunt en barre, fut agardé qe le pleyntif recoverist sa dette e cez damages solum descrescioun des justicez etc.

IV.[2]

Ou dette fust recoveri vers le defendant par defaute etc.

Thomas de Verdoun porta son bref de dette vers Jon de Swyntone persone del eglise de Seint Alban e dit qe atort ly detint xx marz. E de prover la dette mist avant sa lettre obligatorie le qelle lettre Jon conu et dit q'il aveit pleinement paié e mist avant acquitance qe ceo tesmoigne.

Thomas respond et dit qe nent son fet et prest del averer.

Jon qe son fet, prest etc.

Hervi a *Jon*. Swez bref de faire venir bon enqueste pur atteindre la verité. E gaitez vos jours as viij de la Trinité.

A quel jour Thomas se profri. E Jon fut solempnement demandé e ne vint nent.

Hervi prist le record e rehercea la parole coment il aveint pledé e dit : Si agarde la court qe Thomas recovere xx marz e ces damages de C. souz vers Jon et Jon en la mercy. E ceo fuit en presenz *Ber.* e touz les autres Justices par avisement etc.

6. ANDREW *v.* MARTIN.[3]

Un Estevyn le fiz Martin de Seppenan porta sun bref de dette vers Jon le fiz Martin de Norf' e dist que atort ly detint xlvj marz d'argent e pur ceo atort q'il ly lessa le maner de H. a terme de x aunz fesant par an x marz, par qel lesse il fut seisi jekes au fin du

[1] From *P.* [2] From *Y* (fol. 244 v°). [3] From Y (fol. 245 r°).

III.

A writ of debt was brought against a man who asked what he had in proof of the debt. He put forward the defendant's deed which he acknowledged, and the defendant put forward an acquittance which the demandant denied. They put themselves upon the country, and an inquest was summoned. And because the defendant did not come after the inquest was joined, but made default, where he should have sued that which he had put forward in bar, it was awarded that the plaintiff recover his debt and his damages according to what the justices should decree etc.

IV.

Where a debt was recovered against the defendant by default etc.

Thomas de Verdun brought his writ of debt against John of Swyntone, parson of the church of St. Alban, and said that wrongfully did he detain from him twenty marks; and to prove the debt he put forward John's bond, which bond John acknowledged, but said that he had fully paid the money, and he put forward an acquittance in testimony of this.

Thomas answered and said that it was not his deed and that ready was he to aver this.

John said that it was the deed of Thomas and ready was he etc.

Stanton J. (*to John*). Sue a writ to make a jury come to find the truth in this matter. And await your day on the octave of Trinity.

At that day Thomas appeared; and John was solemnly called, but came not.

Stanton J. took the record and rehearsed the cause, as they had pleaded it and said: So awards the court that Thomas recover twenty marks and his damages of one hundred shillings against John, and let John be in mercy. And this was in the presence of Bereford C.J. and all the other Justices on consideration etc.

6. ANDREW *v.* MARTIN.

One [John the son of Andrew of Selby] brought his writ of debt against Nicholas the son of Martin of Norfolk and said that he wrongfully detained from him forty-six marks of silver; and for this wrongfully because he leased to him the manor of H. for a term of ten years, rendering therefor ten marks a year. And by this lease Nicholas was

terme issi ke arere lui sunt de cele terme xlvj marz a ces damages cent souz.

Hedon defendi etc. e dit qe a tel bref ne deveit il estre respondu, qar durant le terme il put aver destreint e destresce avowé.

Hervi. Dites autre chose.

Hedon. Ren arere, prest etc.

Roiston. Est ceo vostre fet ?

Hedon. Joe ne plede mi a ceo, qar vostre bref si est fundu suz un lesse de terme des aunz ; dount vous respoundi jeo, qe reen arere.

Hervi. Il vous covent respondre primes au fet.

Hedon. Ne pooms dedire.

Roiston. E nous jugement, desicom il unt conu le fet estre lour fet, e n'ount mie acquitaunce. Jugement etc.

Hedon. Nous dioms qe pleinement paié solom les termes en l'escrit contenuz, e prest etc.

Hervi a *Hedon.* Vous dirriez ben si ceo fust rente service etc. qar adonqe l'averement serreit recevable saunz especiauté, pur ceo qe quele maner qe vous seiez lié par mesme la maner vous serrez deslié etc.

Hervi. Parlez taunke demain.

The Record of the Case.

De Banco Rolls, 4 Edw. II., Trinity (No. 187), r. 37d., Yorks.

Nicholaus filius Martini de Norfolk' in misericordia pro pluribus defaltis etc.

Idem Nicholaus summonitus fuit ad respondendum Iohanni filio Andree de Seleby de placito quod reddat ei quadraginta et sex marcas quas ei debet et iniuste detinet etc. Et unde idem Iohannes per attornatum suum dicit quod (cum idem Iohannes die Veneris proxima ante festum Ascensionis domini anno regni regis Edwardi patris domini regis nunc secundo apud Eboracum concessisset et ad firmam dimisisset predicto Nicholao totum capitale messuagium suum cum omnibus terris et tenementis suis et annuo redditu in uilla de Dyghton Habendum et tenendum ipsi Nicholao et heredibus suis et assignatis de predicto Iohanne et heredibus suis a festo sancti Martini in yeme anno predicto usque ad terminum duodecim annorum post sequencium Reddendo inde per annum uidelicet primo anno duas marcas unam scilicet inde medietatem ad Pentecosten et aliam medietatem ad festum sancti Martini in yeme et singulis annis sequentibus quatuor marcas per annum ad eosdem terminos usque ad finem duodecim annorum) idem Nicholaus predictas uiginti et sex marcas de arreragiis tocius termini predicti

seised until the end of the term so that there are forty-six marks in arrear to him of that term, to his damage of one hundred shillings.

Hedon defended etc. and said that [John] ought not to be answered on such a writ as this, for during the term he could have distrained and avowed the distress.

STANTON J. Say something else.

Hedon. Nothing in arrear. Ready etc.

Roston. Is this your deed?

Hedon. I am not pleading on that; for your writ is founded upon a lease for a term of years; on that I answered you that nothing was in arrear.

STANTON J. You must first answer the deed.

Hedon. We cannot deny it.

Roston. And we ask judgment, since they have acknowledged the deed to be their deed, and they have no acquittance. Judgment etc.

Hedon. We say that they were fully paid according to the terms contained in the writing; and ready are we etc.

STANTON J. to *Hedon.* You would be right, if this were rent service etc., for then the averment would be receivable without specialty; for in whatever way you are bound, in the same way you will be unbound etc.

STANTON J. Speak of it to-morrow.

Translation of the Record.

For the reference, see opposite.

Nicholas the son of Martin of Norfolk in mercy for several defaults etc.

The same Nicholas was summoned to answer John the son of Andrew of Seleby on a plea that he render to him forty-six marks which he owes to him and unlawfully detains etc. Whereupon the same John by his attorney says that (whereas the same John at York on the Friday[1] next before the feast of the Ascension in the second year of the reign of king Edward the father of the lord king who now is, granted and to farm let to the aforesaid Nicholas all his chief messuage with all his lands and tenements and an annual rent in the town of Deighton. To have and to hold to him the said Nicholas and his heirs and assigns of the aforesaid John and his heirs from the feast of St. Martin in winter in the year aforesaid for the term of twelve years next following Rendering therefor annually, to wit, in the first year two marks, that is to say, one moiety on Whitsunday and the other moiety on the feast of St. Martin in winter, and in each of the following years four marks yearly on the same dates until the end of the twelve years) the same Nicholas the aforesaid forty[2]-six marks of arrears of the whole term

[1] 4 May 1274. [2] The 'uiginti' of the Record seems to be an error for 'quadraginta.'

The Record of the Case—*continued.*

iam preteriti eidem Iohanni hactenus reddere contradixit et adhuc contradicit etc. Vnde dicit quod deterioratus est et dampnum habet ad ualenciam decem librarum. Et inde producit sectam etc. Et profert quoddam scriptum inde inter eos indentatum sub nomine predicti Nicholai quod predictas dimissionem et solucionem redditus antedicti in forma predicta testatur etc.

Et Nicholaus per attornatum suum uenit et non dedicit quin predictum scriptum sit factum suum etc. set bene dicit quod nichil aretro est eidem Iohanni de predicto redditu. Et hoc pretendit uerificare etc.

Et Iohannes dicit quod (cum predictus Nicholaus cognoscit predictum scriptum per quod ipse tenetur ei in predicto debito esse factum suum nec aliquid ostendit specialitatis per quod ipse quietus esse debeat de eodem nisi tantum quod pretendit uerificare per patriam nichil inde aretro existere etc. que quidem uerificacio non est admittenda contra factum predictum) petit iudicium etc.

7. BOYUILL *v.* BOYUILL.

I.[1]

Dower, ou le tenaunt fist defaute par collusion pur faire le termer perdre son terme solom statut de Gloucestre; et la collusion fust enquys.

Une femme porta bref de dower assigné devers un B. qe fist defaute après defaute etc. Survynt un W. et dit q'il tient les tenementz a terme des anz du lees B. et dit q'il fist defaute par collusioun pur nous faire perdre nostre terme et prioms benefiz d'estatut qe nul jugement se face sur la defaute.

Scrop. Ceo q'ele demaunde c'est son dower assigné avant q'ele fut esposé et ensy ele le demaunde par bon dreit qe ele ad et nyent par collusion. Et statut veot qe si le demaundaunt must[2] s'accioun par bon dreit, soit le jugement parfourny[3]; dount desicom il ne put assigner nul torte ne collusion en nostre persone, jugement s'il puisse nostre jugement targer.

Hunt. L'estatut dit expressement, si le tenant face defaute ou voille rendre par collusioun pur faire le termer perdre son terme, soit la collusion enquys et nous voloms averer la collusion[4] etc. Et veetz yci fait qe tesmoigne nostre terme.

Ber. Ne veot statut ceo, qe si le tenant face defaute ou voille rendre par collusioun etc.? Et le tenant ad fait defaute[5] et le termer

[1] From *B*, collated with *G*, *M* and *R*. The first paragraph is not in quite the same words in *M* as in the other MSS., but is to the same effect. The text of the report in *R* is much damaged. [2] mut *G*, *R*; mette *M*. [3] *Ins.* et nous ne sumes nent tenaunt, einz demaundoms nostre dowere assigné *M*. [4] *Ins.* jugement *M*. [5] *Om.* Et le . . . defaute *R*.

Translation of the Record—*continued.*

aforesaid now past has heretofore refused and still refuses to render to the same John. Whereupon he says that he is injured and has damage to the value of ten pounds. And thereof he brings suit etc. And he proffers a certain writing thereof between them indented under the name of the aforesaid Nicholas which witnesses the aforesaid demise and payment of the beforementioned rent in the form aforesaid etc.

And Nicholas comes by his attorney and does not deny that the aforesaid writing is his deed etc.; but well he says that nothing is in arrear to the same John of the aforesaid rent; and this he offers to aver etc.

And John says that (whereas the aforesaid Nicholas acknowledges that the aforesaid writing by which he is bound to him in the aforesaid debt is his own deed) he shows no specialty by which he ought to be quit of the same, save only that he offers to aver by the country that nothing is in arrear thereof etc., and this averment ought not to be admitted against the aforesaid deed, and he asks judgment etc.

7. BOYVILL *v.* BOYVILL.[1]

I.

Dower, where the tenant made default by collusion in order to make the termor lose his term as described in the Statute of Gloucester. Inquiry was made of the collusion.

A woman brought a writ of dower *certein assigné* against one [John] who made default after default etc. There came one [Richard] and said that he held the tenements for a term of years of the lease of B. and he said that John made default by collusion to make [him] lose [his] term; and [he prayed] the benefit of the statute,[2] so that no judgment might be made on the default.

Scrope. What she demands is her dower *certein assigné* assigned before she was married, and so she demands it with good right, and not by collusion. And the statute says that if the demandant bring his action with good right let judgment be rendered. Wherefore since he cannot assign any wrong or collusion in our person, we ask judgment if he can delay our judgment.

Huntingdon. The statute says expressly that if the tenant make default or wish to render by collusion to make the termor lose his term, let an inquest be made concerning the collusion, and we wish to aver the collusion etc. And see here a deed which witnesses our term.

Bereford C.J. Does not the statute state this: 'that if the tenant make default or wish to render by collusion etc.'? The tenant

[1] This is *Fitz.* Book iii. fol. 99, Resceit, No. 159.

[2] Statute of Gloucester, 6 Edw. I. c. xi.

vient en court et veit q'il perdra son terme,[1] et mette debat et dit *ut supra* et en tesmoignaunce de ceo si mette il avant fait du terme ; pur quei ne doit mye la collusion estre enquys ?

Et pus fust agardé l'averement sur la collusion, et qe le jugement se targereit si la q'il fut enquys de la collusion etc.

II.[2]

Isabel ke fu femme C. porta son bref de dowere assigné vers H. et demaunda le maner de C. e dist qe C. lui avoit assigné etc. H. fist defaute après defaute.

J. Denham. Vous avez icy W. le Blund qe dit q'il tient teu maner par la reson qe mesme celui C lessa ceu maner a Johan le Blund son pere e ses heirs a terme de xx anz donqe avenir. Uncore sunt x anz ; e il com heir Johan tient teu maner ; et prie qe nule defaute qe H. fet par collusion entre le tenant et le demandant solom statut Gloucestre lui ne turne en prejudice.

Heng. Le statut de Gloucestre ne overe mès en la cité de Londres.

J. Denham. Il overe par tut devaunt Justices de equité. (Le statut fust regardé.)

Beref. Le statut deit estre entendu par tut le realme etc.

Hengham. Le statut ne overe mès pur celui a qi les tenementz furent lessez.

Ber. Fist le heir le fet qe dit *dimisisse Iohanni le Blund et heredibus suis.*

Hengham. Sire, terme si est chatel et chateal ne puet nent descendre.

Bereford. Le fet voet qe Johan purchacea le terme a lui et ces heirs ; et W. est heir Jon ; et il ne perd mie aumoigne, qe la doune a ses purcelles, par quei primes agardoms seisine a la femme ; e pus enquerroms de la collusion e si nous trouvoms la collusion, l'execucion demoera tanke au fin du terme etc. Ideo preceptum est uicecomiti etc.

[1] *Om.* et veit . . . terme *R.* [2] From *Y* (fol. 144 r°).

has made default ; and the termor comes into court and sees that he will lose his term. He raises the question and says (as above) ; and in witness of this he puts forward a deed concerning the term. Why should not inquiry be made of the collusion ?

And then the averment upon the collusion was awarded, and that judgment should be delayed until inquiry had been made thereon etc.

II.

[Joan the widow of William] brought her writ of dower *certein assigné* against [John the son of William de Boyvill] and demanded the manor of C. and she said that [William] had assigned it to her etc. John made default after default.

J. Denham. You have here [Richard the son of John of Hodelston] who says that he holds this manor for the reason that this same [William] leased the manor to John his father and his heirs for a term of twenty years then to come. There are still ten years to come, and he as the heir of John holds this manor. He prays that any default which [John the son of William de Boyvill] may make by collusion between the tenant and the demandant under the Statute of Gloucester shall not turn to his prejudice.

Hengham. The Statute of Gloucester has no effect save in the city of London.

J. Denham. It has effect everywhere before the Justices by equity.[1] (The statute was perused.)

Bereford C.J. The statute should be understood as applying throughout the realm etc.

Hengham. The statute has no effect save for him to whom the tenements were leased.

Bereford C.J. The deed has made him the heir, for it says ' that he has demised to John *and his heirs*.'

Hengham. Sir, a term is a chattel, and a chattel cannot descend.

Bereford C.J. The deed states that John purchased the term to him and his heirs, and [Richard] is the heir of John ; and he will not lose his bounty, for the gift provides for John's issue,[2] therefore first of all we award seisin to the wife, and then we will inquire about the collusion, and if we find collusion execution of our judgment will be delayed till the end of the term etc. Therefore the sheriff is ordered etc.

[1] The words of the statute are :— En mesme la manere seit fet de equité en tel cas devaunt Justices si le termer chalange avaunt le jugement.

[2] The meaning of this passage is uncertain. The French text is probably corrupt.

III.[1]

Johane qe fut la femme William de Boneville porta bref de dowere assigné vers Johan le fitz William de Boneville et demaunda le maner de C. enterement. Johan fit defaute. A jour de graunt *Capé* retourné il fit defaute *ut prius*. La femme pria seisine de terre. Survynt William le fitz Robert de H. et dit q'ele ne dut seisine aver qe William pere Johan, vers qi le bref est ore porté qe fit defaute après defaute, lessa lez tenementz q'ore sont en demaunde a Robert nostre pere et a cez heirs a terme de xx aunz le quel terme de[2] xx aunz sont arrere et Robert nostre pere est mort et nous sumes eynz com fitz et heir. Johan procura ceste femme q'est sa mere de ly empleder et fist defaute par collusioun pur nous fere perdre nostre terme et prioms qe la collusioun seit enquise par statut.

Malm. Vous n'estes my en cas de statut, qe statut ne se estent forsqe entre le feffour et le purchassour a terme ; mès William n'est pas celly a qi lez tenementz furent lessez, ne Johan n'est pas celly qe lez lessa, par quei vous n'estes my en cas d'estatut.

Cant. Nous sumes en cas d'estatut et venimes avaunt jugement rendu etc.

Berr. Avez rien de terme ?

Cant. Veez ici le fait soun pere fait a nostre pere qe tesmoigne le terme.

Berr. Si Johan fut en court, il avereit respouns qe barreit la partie etc.

Pass. Le fait q'il mette avaunt tesmoigne qe nostre baroun fut seisi, par quei nous devoms dowere aver et nent estre targez, qar le fait q'il mettent avant prove q'il n'y ad nul collusioun.

Berr. Si Johan fut en court il avereit respouns qe barrereit la femme de dowere, le quel respouns il perde ore de gree, par quei il pert q'il y ad collusioun ; et pur ceo nous voloms qe execucioun de jugement se targe tanqe nous eoms enquis de la collusioun.

Pass. Nous prioms q'il trove seurté a respoundre dez issuez en le meen temps.

Berr. Il n'est my en cas com celuy qe prie d'estre resceu a defendre son dreit countrepledé, car il dit q'il est tenant dez tenementz a terme

[1] From *T* (Mich. 5 Edw. II). [2] *Om.* de *T*.

III.

Joan the widow of William de [Boyville] brought her writ of dower *certein assigné* against John the son of William de [Boyville] and demanded the manor of C. in its entirety. John made default. At the day when the grand *cape* was returned he made default as before. The woman prayed seisin of the land. [Richard] the son of [John] of H. intervened and said that she ought not to have seisin because William the father of John, against whom the writ is now brought, and who made default after default leased the tenements which are now in demand to [John] our father and his heirs for a term of twenty years which term of years is unexpired, and [John] our father is dead and we are ' in ' as son and heir. John [the son of William] has procured this woman who is his mother to implead him and has made default by collusion to make us lose our term, and we pray that the collusion may be inquired under the statute.

Malberthorpe. You are not in the case of the statute, for the statute does not apply save between the feoffor and the purchaser for a term ; but [Richard] is not he to whom the tenements were leased, nor is John he who leased them. Therefore you are not in the case of the statute.

Cambridge. We are in the case of the statute, and we came before judgment was delivered etc.

Bereford C.J. Have you anything in evidence of the term ?

Cambridge. See here the deed of his father made to our father which witnesses the term.

Bereford C.J. If John were in court, he would have an answer which would bar the party etc.

Passeley. The deed which he puts forward witnesses that our husband was seised. Therefore we ought to have dower, and not to be delayed, for the deed which they put forward proves that there was no collusion.

Bereford C.J. If John were in court he would have an answer which would bar the woman of her dower, and he loses that answer of his own will, and therefore it appears that there is collusion. Therefore we decide that execution of the judgment stand over until we have inquired about the collusion.

Passeley. We pray that he find surety to answer for the issues in the mesne time.

Bereford C.J. He is not in the position of a man who prays to be received to defend his right and is counterpleaded ; for he says that he is tenant of the tenements for a term of years, and he puts

dez aunz et de ceo mette avant fait qe ceo tesmoigne a quei la court deit doner fey le quel terme vous ne contrepledez pas.

Pass. Nous avoms contrepledé le[1] en taunt com nous dioms q'il n'est pas en cas de statut.

Et sic ad patriam de collusione.

The Record of the Case.

De Banco Rolls, 4 Edw. II., Trinity (No. 187), r. 69, Cumberland.

Iohanna que fuit uxor Willelmi de Boyuill' per Iohannem de Kyrkeby attornatum suum optulit se quarto die uersus Iohannem filium Willelmi de Boyuill' de placito manerii de Kyrkesantan cum pertinenciis de quo predictus Willelmus quondam uir ipsius Iohanne eam dotauit ad ostium ecclesie quando eam desponsauit etc. Et ipse non uenit et alias fecit defaltam scilicet a die Pasche in tres septimanas proximo preterita postquam summonitus etc. ita quod tunc preceptum fuit uicecomiti quod caperet predictum manerium cum pertinenciis in manum domini regis etc. et diem etc. et quod summoneret eum quod esset hic ad hunc diem etc. scilicet a die sancte Trinitatis in xv dies etc. Et uicecomes modo testatur diem capcionis et quod summonuit etc.

Et super hoc uenit quidam Ricardus filius Iohannis de Hodelston' et dicit quod conuenit inter Willelmum de Boyuill' de Thoresby qui quondam seisitus fuit de predicto manerio ex parte una et Iohannem de Hodeleston' patrem Ricardi cuius heres ipse est ex altera, uidelicet, ad festum sancti Martini in yeme anno regni regis E. patris domini regis nunc uicesimo septimo quod dictus Willelmus dimisit ad firmam predicto Iohanni de Hodeleston' predictum manerium cum pertinenciis tenendum sibi et heredibus suis usque ad terminum uiginti annorum proximo sequencium plenarie completorum proximo subsequencium etc. Et profert partem cuiusdam scripti inde inter partes predictas indentati que hoc testatur etc. Et dicit quod ipse tenet predictum manerium per formam dimissionis predicte eo quod nouem anni eiusdem termini adhuc sunt uenturi etc. Et dicit quod predicta Iohanna implacitat inde predictum Iohannem filium Willelmi per collusionem inter eos habitam ad auferendum ipsi Ricardo terminum suum in hac parte etc. Unde cum ipse ueniat ante iudicium etc. petit per statutum etc. quod ipse ad uerificandam collusionem predictam admittatur etc. Et admittitur per statutum etc.

Et predicta Iohanna dicit quod ipsa habet ius ad predictum manerium petendum nomine dotis in forma predicta et quod ipsa non implacitat predictum Iohannem filium Willelmi per aliquam collusionem etc. sicut predictus Ricardus dicit. Et hoc petit quod inquiratur per patriam. Et Ricardus similiter.

Ideo preceptum est uicecomiti quod uenire faciat hic a die sancti Michaelis in xv dies xij etc. per quos etc. et qui nec etc. ad recognoscendum etc. quia tam etc. Et interim cesset reddicio iudicii super defalta predicti

[1] de *T*.

forward a deed which witnesses this, and to which the court must give faith. This term you do not counterplead.

Passeley. We have counterpleaded it, inasmuch as we say that he is not in the case of the statute.

And so to the country on the question of collusion.

Translation of the Record.

For the reference, see opposite.

Joan the widow of William de Boyvill by John of Kyrkeby her attorney offered herself on the fourth day against John the son of William de Boyvill on a plea of the manor of Kirksanton[1] with its appurtenances, with which the aforesaid William sometime the husband of the same Joan endowed her at the door of the church when he married her etc. And he came not and heretofore he made default to wit three weeks after Easter last past, after he had been summoned etc. so that the sheriff was then ordered to take the aforesaid manor with the appurtenances into the king's hand etc.; and the day etc. and that he summon him to be here at this day etc. to wit, the quindene of Trinity etc. And the sheriff now witnesses the day of the taking etc. and that he summoned him etc.

And upon this comes one Richard the son of John of Hodeleston, and says that it was agreed between William de Boyvill of Thoresby who was sometime seised of the aforesaid manor of the one part, and John of Hodeleston, the father of Richard, whose heir he is, of the other part, to wit on the feast[2] of St. Martin-in-winter 27 Edw. I. [in such way] that the said William demised to farm the aforesaid manor with its appurtenances to the aforesaid John of Hodeleston to hold to him and his heirs for the term of twenty years next following fully to be completed etc. And he proffers a part of a certain writing thereof between the parties aforesaid indented which witnesses this etc. And he says that he holds the aforesaid manor by the form of the demise aforesaid on the ground that nine years of the said term are yet to come etc. And he says that the aforesaid Joan impleads the aforesaid John the son of William thereof by collusion had between them to take away his term from him Richard in this behalf etc. Whereupon since he comes before judgment etc. he asks that he may be admitted by the statute[3] etc. to aver the aforesaid collusion etc. And he is admitted by the statute etc.

And the aforesaid Joan says that she has a right to demand the aforesaid manor in the name of dower in the form aforesaid and that she does not implead the aforesaid John the son of William by any collusion etc. as the aforesaid Richard says. And she asks that this may be inquired by the country. And Richard likewise.

Therefore the sheriff is ordered to cause to come here on the quindene of St. Michael twelve men etc. by whom etc. and who neither etc. to make recognition etc. because as well etc. Meanwhile let execution of the judgment on the default of the aforesaid John the son of William stay.

[1] Kirksanton is a hamlet of Millom. [2] 11 November 1299. [3] Stat. Glouc. c. 11.

The Record of the Case—*continued.*

Iohannis filii Willelmi etc. Et predictus Ricardus filius Iohannis ponit loco suo Robertum de Berewyk' uel Thomam de Thornton uersus predictam Iohannam de placito predicto etc.

8. RUSS *v.* THE EARL OF GLOUCESTER.[1]

Dowere, ou la seconde femme demaunda des tenementz donez en fee taillé.[2]

Une Alice porta son bref de dowère devers W. de B.

Hing. Dower ne doit ele aver, qe nous vous dioms q'un Johan de E. fut seisi, qe hors de sa seisine dona a G. et J. sa femme et les heirs de lour ij[3] corps engendrez etc. et mesme ceste Alice est la seconde femme mesme cesti G., et demaundoms jugement si ele puisse dower demaunder.

Hunt. Lour respounse n'est pas pleyn, a dire qe les tenementz furent donez a G. et J. etc., sauntz dire,[4] 'et si G. et J. deviassent sauntz heir etc. qe les tenementz revertissent[5] al donour ou[6] ses heirs.' Et ceo n'ount il mye dit. Jugement.

Hing. Il n'estut[7] pas etc., del houre qe nous voloms averer qe les tenementz furent donez en fee taillé auxi com vous supposez[8] en quel cas la seconde femme n'avera mye dowere.

Hunt. Jeo[9] le vous moustrai q'il covent, qe si les tenementz furent donez en fee taillé a G. et J. etc. auxi com vous supposez, reservant la reversioun al donour par aventure ele serreit en ceo cas barré de dower, mès si les tenementz furent donez en fee taillé a G. et J.[10] et a les heirs de lour ij corps engendrez et qe s'il devyont saunz heir etc. qe les tenementz remeignent as dreit heirs G. a toux jours a aver et tenir a[11] chiefs seignurages de fee par les services etc. reservant nent la reversioun al donour ne ses heirs ; en tieux cas la seconde femme avera dowere ; par quei il covent qe vous diez si la reversion fut salvé ou noun.

Hervy.[12] Ne vous dit il qe les tenementz furent donez *ut supra,* et s'il die verité, ele n'avera pas dower etc. et ceo tende d'averer. Par quei il[13] n'est pas mester a dire plus ; dites[14] outre.

Hunt. A la commune ley en chesqun cas ou le baroun murust seisi en son demene com de fee, le quel qe ceo fut fee simple ou fee taillé

[1] From *B*, collated with *G* and *M*. [2] The headnote is similar in *G*; but it continues thus : Similiter in termino Michaelis anno sexto in fine termini. [3] *Om.* ij *G, M*. [4] sanz ceo q'il dient *M*. [5] retournent *M*. [6] et *G, M*. [7] ne fet *M*. [8] *Om.* auxi . . . supposez. *Ins.* a G. et J. *M*. [9] Ceo *M*. [10] *Om.* auxi com . . . et J. *M*. [11] de *G, M*. [12] Hingh. *M*. [13] il semble q'il *M*. [14] *For* plus dites, *subs.* dites plus, *B*.

Translation of the Record—*continued.*

And the aforesaid Richard the son of John puts in his place Robert of Berewyke or Thomas of Thornton against the aforesaid Joan on the aforesaid plea etc.

8. RUS *v.* THE EARL OF GLOUCESTER.[1]

Dower: where a second wife demanded dower of tenements which were given in fee tail.

One [Agnes] brought her writ of dower against W. de B.

Hengham. She ought not to have dower; for we tell you that one John of E. was seised, and he of his seisin gave [the tenements] to G. and J. his wife and the heirs of their two bodies begotten etc. And this same [Agnes] is the second wife of this same G. We ask judgment whether she can demand dower.

Huntingdon. Their answer is not full, that is to say, that the tenements were given to G. and J. etc. without saying 'and if G. and J. die without an heir etc. that the tenements should revert to the donor or his heirs.' They have not said this. We ask judgment.

Hengham. It is not necessary etc., since we wish to aver that the tenements were given in fee tail as you suppose; and in that case the second wife will not have dower.

Huntingdon. I will show you that it is necessary to use these words; for if the tenements were given in fee tail to G. and J. etc. as you suppose, reserving the reversion to the donor, perhaps she would in that case be barred of her dower. But if the tenements were given in fee tail to G. and J. and the heirs of their two bodies begotten, and so that if they should die without an heir etc., the tenements should remain to the right heirs of G. forever, to have and to hold of the chief lords of the fee by the services etc. and not reserving the reversion to the donor or his heirs, in such cases the second wife will have her dower. Therefore you must say whether the reversion was reserved or not.

Stanton J. Has he not told you that the tenements were given (as above)? If he speaks the truth she will not have her dower etc. He offers to aver what he has said. Therefore there is no need for him to say more. Answer further.

Huntingdon. At the common law in every case where the husband died seised in his demesne as of fee, whether it was fee simple or fee

[1] For earlier reports of this case, *see* vol. vi. p. 161. It appears to have been argued in successive terms. The case to which note 2 on the opposite page refers will be found in vol. xiii. of this series at p. 43.

la femme averoit dower, et par l'estatut n'est ele pas ousté. Jugement si ele ne deive dower aver.

Cant. Nous vous dioms qe les tenementz furent donez a G. et J. sa premere femme joyntement et a les heirs etc. et vous dioms[1] q'en nul cas ou tenementz sount donez joyntement[2] en fee taillé, n'avera pas la femme dower.

Hunt. Nous voloms averrer qe nostre baroun murust seisi en son demene com de fee si qe dower nous pout, prest etc.

Hing. Nous vous avoms granté un manere de fee *scil.* fee taillé et vous ne serretz mye resceu de traverser ceo qe vous est granté etc. mès dites q'il murust [seisi] com de fee pure et nous serroms tost a un[3] ou q'il murust etc. com[4] en fee taillé et demoroms en jugement.

Hunt. A ceo n'avoms pas mester, de pus qe nous voloms averer[5] qe nostre baroun[6] murust seisi en son demene com de fee.[7]

Hervy. Il dounent un response pur barre et dient qe les tenementz furent etc. en fee taillé a G. et J. sa premere femme et as heirs etc. dount il vous covent granter ou dedire, qe si vous grantez, vous estes barré de dowere pur toux jours et si vous le voillez dedire et[8] dire q'il furent donez en fee simple, il vous respoundra.

Et fust chacé par la court a granter de[9] quel estat le baron morust ou en fee taillé ou en fee simple etc.

Hunt. Nous vous dioms qe nostre baron murust seisi en son demene com de fee pure, prest etc.[10]

Nota.[11] Mès ensi fut qe les tenementz fussent donez en fee taillé al baroun soul, sa premere femme, et ensi la seconde, s'il ne eyt issue de la premere avera dower *siue habeat exitum siue non,* pur ceo qe si ele ust eu issue par son baroun il serreit enherité. Et hec est causa.

9. FENNE *v.* WYNSTAN.[12]

Entré: ou le bref fust chalangé, e le travers pris sur un aturnement.

Un Willem porta son bref d'entré etc. Precipe Rogero etc. reddat Roberto filio W. et Roberto filio eiusdem Roberti unum messuagium etc. in F. quod B. de R. dedit Petro de W. et Isabelle uxori eius et heredibus

[1] *Ins.* outre *M.* [2] *Ins.* ou en fee simple ou *M.* [3] al issue *M.* [4] *sic M*; *Om.* etc. com *B.* [5] The following words are here interlineated in *G*:—Et credo q'ele serreit resceu a cel averement, non obstante dicto alterius ut patet in termino Pasche anno xix. [6] The words 'ou par article' are here inserted in *M*, but are underlined for deletion. [7] *Ins.* issint qe douwer la poyt *G*, *M.* [8] *Om.* dedire et *M.* [9] *Om.* de, *Ins.* en quel fee et *G*, *M.* [10] *Add* Et alii e contra *G*, *M.* There is a reference here in *G* to a case of Easter term 19 Ed. II. [11] This entry occurs in the margin of *G* opposite the speech by Cambridge. The correct reading of the last four words is doubtful. [12] From *B*, collated with *G* and *M*. The writ is given in *D* and *P*, but without a report. The words 'e le ... aturnement' in the headnote are in *B* only and in a later hand.

tail, the wife would have her dower and she is not ousted from it by the statute. Judgment whether she ought not to have dower.

Cambridge. We tell you that the tenements were given to G. and J. his first wife jointly, and to [their] heirs etc. We tell you that in no case where the tenements are given jointly in fee tail will the wife have dower.

Huntingdon. We wish to aver that our husband died seised in his demesne as of fee, so that endow us he could. Ready etc.

Hengham. We have granted to you one kind of fee, to wit, fee tail; and you will not be received to traverse what has been granted to you etc. But say that he died seised as of fee simple, and we shall soon be at [issue], or that he died seised etc. in fee tail, and then we will abide judgment.

Huntingdon. We have no need for that, for we will aver that our husband died seised in his demesne as of fee.

Stanton J. They give an answer to bar you, and say that the tenements were given in fee tail to G. and J. his first wife and to their heirs etc.; and therefore you must grant or deny this. If you grant it, you are barred of dower for ever, and if you wish to deny it and say that they were given in fee simple, he will answer you.

And the demandant was driven by the court to grant of what estate her husband died seised, fee tail or fee simple etc.

Huntingdon. We tell you that our husband died seised in his demesne as of fee simple. Ready etc.

Note.[1]—But were it so, that the tenements were given in fee tail to the husband alone, his first wife, and also his second wife if he had no issue by the first wife, will have dower, and this whether the second wife have issue or not, because if she had issue by her husband that issue would inherit. That is the reason.

9. FENNE *v.* WYNSTAN.

Entry. The writ was challenged, and a traverse taken upon an attornment.

[Robert the son of Walter and Robert his son] brought their writ of entry etc.:—Command Roger [the son of Peter] that he render to Robert the son of Walter and Robert the son of the same Robert one messuage etc. in Friskney which [William] de Ratheby gave to Peter Wynstan and Isabel his wife and the heirs of him the said Peter

[1] *See* note 11 opposite. This marginal comment is obscure, and its text seems to be imperfect.

ipsius Petri in quod idem Rogerus non habet ingressum nisi per Alanum de Lawe secundum uirum ipsius Isabelle et ipsam Isabellam qui illud ei dimisit que quidem Isabella illud post mortem primi uiri sui tenuit de predictis Roberto et Roberto ex assignacione quam Robertus filius et heres Petri inde fecit predictis Roberto filio W. et Roberto filio eiusdem Roberti et heredibus eiusdem Roberti filii Roberti et quod post mortem predicte Isabelle prefato Roberto filio W. et Roberto filio eiusdem Roberti remanere debet per formam assignacionis predicte ut dicit. Et nisi fecerit etc.

Malm. A cestuy bref ne devetz estre respondu, qe le bref veot al comencement qe Robert le fiz P. granta la reversioun de ceux tenementz a Robert le fitz Wauter et a Robert le fiz mesme cestuy R. et a les heirs R. le fiz R.; et pus en la fyn dit qe les tenementz après la morte Isabel a les avantdit R. le fiz W. et R. le fiz mesme cestuy R. remeyndre deyvent par la forme del assignement avantdit fesaunt nule mencioun illoeqes des heirs R. le fitz R. et issi le bref nent pursuant en luy meisme etc.

Berr. Le bref veot qe Robert le fiz P. granta a Robert le fiz W. et a Robert le fiz mesme cestuy R. et a les heirs R. le fiz R.; et puys dit qe a[1] les avantdit R. le fiz W. et R. le fiz mesme cestuy R. remeyndre deyvent par la forme etc. q'ad relacioun al grante et assignement avantdit par quei[2] le bref est assetz bon. Responez outre.

Malm. Nous demaundoms la vewe.

Fr. Altrefoiz portames bref de mesme la nature vers vous, a quel bref vous avietz la vewe, et pus abatistes nostre bref etc.

Toud. Statut veot, 'si quis per aliquam excepcionem dilatoriam cassat breue, sicut post uisum[3] etc. male nominando uillam uel per noun tenure,' en ceo cas est homme ousté de la vewe, mès le bref ne s'abatist poynt par excepcion d'estatut sicom vous avetz conu.

Malm. Nous vouchoms a garraunt J. de Ros etc. *Et stetit uocacio.* Et pus vynt cele vouché et chalangea le bref *ut supra.* *Et non allocatur.*

Et pus dit qe la ou il dient qe Robert le fiz P. granta etc. par quel grante ele s'atturna nous vous dioms q'ele ne s'atturna point, prest etc. Et alii econtra.

[1] *Om.* a *B, G.* [2] dont *M.* [3] uisus *B.*

and into which the same Roger has not entry save by Alan [del Rawe] the second husband of her the said Isabel and Isabel herself who demised the messuage etc. to him; which Isabel held them after the death of her first husband of the aforesaid Robert and Robert by the assignment which Robert the son and heir of Peter made thereof to Robert the son of Walter and Robert the son of the same Robert and the heirs of the same Robert the son of Robert, and which after the death of the aforesaid Isabel to the aforesaid Robert the son of Walter and Robert the son of the same Robert ought to remain by the form of the assignment aforesaid as he says. And unless he do this etc.

Malberthorpe. On this writ you ought not to be answered, for the writ says at the beginning that Robert the son of Peter granted the reversion of these tenements to Robert the son of Walter and Robert the son of this Robert and the heirs of Robert the son of Robert, and then at the end it says that the tenements after the death of Isabel to the aforesaid Robert the son of Walter and Robert the son of this same Robert ought to remain by the form of the assignment aforesaid without mentioning there the heirs of Robert the son of Robert, and so the writ is not consistent with itself etc.

Bereford C.J. The writ says that Robert the son of Peter granted [the messuage etc.] to Robert the son of Walter and Robert the son of this same Robert and the heirs of Robert the son of Robert, and then it says that 'to the aforesaid Robert the son of Walter and Robert the son of this same Robert [the messuage etc.] ought to remain by the form etc.', and thus relates to the grant and assignment aforesaid. Therefore the writ is sufficiently good. Answer further.

Malberthorpe. We demand a view.

Friskeney. Heretofore we brought a writ of the same nature against you, and on that writ you had a view; and then you abated our writ etc.

Toudeby. The statute[1] says, 'if anyone by any dilatory exception quash a writ, as after view etc., by badly naming the vill, or by non-tenure,' in that case a man is ousted from a view. But that writ was not abated by an exception [mentioned in] the statute, as you have acknowledged.

Malberthorpe. We vouch to warranty [Alan del Rawe] etc. And the voucher stood. Then the vouchee came and challenged the writ (as above) and his challenge was not allowed.

And then he said that whereas they say that Robert the son of Peter granted etc. and that on that grant she attorned tenant, we say that she did not attorn; and ready are we to aver this. And the others to the contrary.

[1] Stat. Westm. II. c. 48.

The Record of the Case.

De Banco Rolls, 4 Edw. II., Trinity (No. 187), r. 68, Lincolnshire.

Robertus filius Walteri de Fenne et Robertus filius eiusdem Roberti per attornatum suum petunt uersus Rogerum filium Petri Wynstan unum messuagium et decem et octo acras terre cum pertinenciis in Friskeneye que Willelmus de Ratheby dedit Petro Wynstan de Waynflet et Isabelle uxori eius et heredibus ipsius Petri et in que idem Rogerus non habet ingressum nisi per Alanum del Rawe secundum uirum prefate Isabelle et ipsam Isabellam qui illa ei dimiserunt, que quidem Isabella ea post mortem predicti Petri primi uiri sui tenuit de predictis Roberto et Roberto ex assignacione quam Robertus filius et heres predicti Petri inde fecit predictis Roberto filio Walteri et Roberto filio eiusdem Roberti et heredibus eiusdem Roberti filii Roberti et que post mortem predicte Isabelle prefatis Roberto filio Walteri et Roberto filio eiusdem Roberti remanere debent per formam assignacionis predicte etc. Et unde dicunt quod predictus Willelmus de Ratheby fuit seisitus de predictis tenementis cum pertinenciis et ea dedit predictis Petro et Isabelle et heredibus ipsius Petri etc. per quod donum iidem Petrus et Isabella fuerunt seisiti de predictis tenementis cum pertinenciis in dominico suo ut de feodo et iure ipsius Petri etc. tempore pacis tempore regis Edwardi patris domini regis nunc capiendo inde explecia ad ualenciam etc. et de ipso Petro descendit ius predicto Roberto ut filio et heredi etc. qui quidem Robertus concessit reuersionem predictorum tenementorum post mortem predicte Isabelle (que ea tenuit post mortem predicti Petri primi uiri etc.[1] de ipso Roberto filio Petri etc.) predictis Roberto filio Walteri et Roberto filio eius, per cuius concessionem et assignacionem eadem Isabella se attornauit de fidelitate et seruicio suo predictis Roberto filio Walteri et Roberto filio eius etc. et que post mortem predicte Isabelle prefatis Roberto filio Walteri et Roberto filio eius remanere debent per formam assignacionis predicte et in que idem Rogerus non habet ingressum nisi per predictum Alanum secundum uirum etc. Et inde producit sectam etc.

Et Rogerus per attornatum suum uenit et alias uocauit inde ad warantum Alanum del Rawe qui modo uenit per summonicionem etc. et ei warrantizat etc. et defendit ius suum quando etc. Et dicit [quod] predicti Robertus filius Walteri et Robertus filius eius nichil clamare possunt in predictis tenementis per aliquam concessionem ipsius Roberti filii Petri etc. quia dicit quod predicta Isabella nuncquam se attornauit predictis Roberto filio Walteri et Roberto filio eius de fidelitate sua per assignacionem predictam. Et de hoc ponit se super patriam. Et Robertus filius Walteri et Robertus filius eius similiter etc. Ideo preceptum est uicecomiti quod uenire faciat hic in crastino sancti Martini xij etc. per quos etc. et qui nec etc. ad recognoscendum etc. quia tam etc.

[1] The word *tenuit* is here repeated in the MS.

Translation of the Record.

For the reference, see opposite.

Robert the son of Walter of Fenne and Robert the son of the same Robert by their attorney demand against Roger the son of Peter Wynstan one messuage and eighteen acres of land with the appurtenances in Friskney which William of Ratheby gave to Peter Wynstan of Wainflet and Isabel his wife and the heirs of him the said Peter and into which the same Roger has not entry save by Alan del Rawe the second husband of the aforesaid Isabel and Isabel herself who demised them to him, (which Isabel after the death of the aforesaid Peter her first husband held them of the aforesaid Robert and Robert by the assignment which Robert the son and heir of the aforesaid Peter made thereof to the aforesaid Robert the son of Walter, and Robert the son of the same Robert and the heirs of the same Robert the son of Robert,) and which after the death of the aforesaid Isabel to the aforesaid Robert the son of Walter and Robert the son of the same Robert ought to remain by the form of the assignment aforesaid etc. And whereupon they say that the aforesaid William of Ratheby was seised of the aforesaid tenements with the appurtenances and gave them to the aforesaid Peter and Isabel and the heirs of him the said Peter etc. by which gift the same Peter and Isabel were seised of the aforesaid tenements with the appurtenances in their demesne as of fee and as of the right of him the said Peter etc. in time of peace in the time of king Edward the father of the lord king who now is, taking the profits thereof to the value etc. and from him Peter descended the right to the aforesaid Robert as son and heir etc.; and this Robert granted the reversion of the aforesaid tenements after the death of the aforesaid Isabel (who after the death of the aforesaid Peter her first husband etc. held them of him the said Robert the son of Peter etc.) to the aforesaid Robert the son of Walter and Robert his son and on this grant and assignment the same Isabel attorned herself of her fealty and service to the aforesaid Robert the son of Walter and Robert his son etc.; which tenements after the death of the aforesaid Isabel to the aforesaid Robert the son of Walter and Robert his son ought to remain by the form of the assignment aforesaid and into which the same Roger has not entry save by the aforesaid Alan the second husband etc. And thereof [they] bring suit etc.

And Roger comes by his attorney and heretofore he vouched thereof to warranty Alan del Rawe who now comes by summons etc., and warrants to him etc.; and he denies their right when etc. and says that the aforesaid Robert the son of Walter and Robert his son can claim nothing in the aforesaid tenements by any grant of him the said Robert the son of Peter etc. because he says the aforesaid Isabel never attorned herself to the aforesaid Robert the son of Walter and Robert his son of her fealty upon the assignment aforesaid. And of this he puts himself upon the country. And Robert the son of Walter and Robert his son likewise etc. Therefore the sheriff is ordered to cause to come here on the morrow of St. Martin twelve etc. by whom etc.; and who neither etc. to make recognition etc. because as well etc.

10. CRETYNGE *v.* WYNTHORP.

I.[1]

Entré *ad terminum qui preteriit* ou le tenant mist avant fait qe voleit fee simple.

Un home porta son bref d'entré [*ad terminum qui preteriit* e dit qe le tenaunt n'ad entré si noun puis le lees qe mesme cesti fit a un Martin[2]] a terme qe passé est.

Frisk. Quei avetz du terme ?

Byngh. mist avant un escript qe tesmoigna le lees.

Frisk. Sire, nous vous dioms q'il mesme dona mesme ceux tenemenz a Martyn a lui e a ses heirs. E demandoms jugement si encontre son fait demene puisse accion avoir.

Byngh. Quei estes vous ?

Frisk. Nous sumes[3] tenantz de la terre.[4]

Byngh. E nous jugement, de pus qe vous ne poetz moustrer qe vous seez privé a Martyn, mès estes tut estrange e ne moustrez ren d'assignement. Jugement si vous q'estes estrange pussez nous de nostre accion barrer.

Frisk. Seioms a un del fait.[5] Grantez ou le[6] deditez, e pus nous plederoms ove vous.

Byngh. Nous mettoms avant fait qe tesmoigne le lees, le quel lees nous voloms averer, si vous le voletz dedire. E vous ne moustrez rens qe vous estes privé a M., ne assignement.[7] E demandoms jugement.

Malm. Vous mettez avant fait en evidence q'est[8] vostre fait demene e de ceo n'avoms qe faire, mès il mette avant vostre fait demene qe tesmoigne fee en la persone M., qe esteint vostre accion. E demandoms[9] jugement si sanz respons au fait devetz estre respondu.

Ber. Il mette avant escript endenté qe tesmoigne le lees ; e vous ly bietz reboter d'accion par un fait faite a cesti a qi vous estes estrange ; e riens ne moustrez d'assignement ; par quei il n'ad my mester a respondre a cel fait.

Byngh. S'il fust empledé e nous vouchast com assigné sanz ceo q'il ne moustre fait d'assignement il ne serreit my garranti. Jugement si par tiel fait a quei il est estrange sanz moustrer chartre d'assignement nous puissetz d'accion barrer.

[1] From *D* collated with *P.* [2] The words in brackets which are omitted in *D* are from *P.* [3] *Om.* sumes *D*, *sic* in *P.* [4] des terres *P.* [5] *Ins.* qe *P.* [6] *Om.* le *P.* [7] assigné *P.* [8] *Om. Malm.* . . . q'est. *Ins.* si sanz respondre a *P.* [9] *Ins.* jugement si saunz respondre a vostre fet devez a autre response estre resceu, qe l'averement qe vous tendez chiet en evidence du fet *P.*

10. CRETYNGE *v.* WYNTHORP.

I.

Entry *ad terminum qui preteriit*, where the tenant put forward a deed which spoke of fee simple.

A man brought his writ of entry *ad terminum* and said that the tenant had not entry save after the lease which he himself made to one Martin for a term which has passed.

Friskeney. What have you of the term ?

Bingham put forward a writing which witnessed the lease.

Friskeney. Sir, we tell you that he himself gave these same tenements to Martin to hold to him and his heirs. We ask judgment whether against his own deed he can have an action.

Bingham. Who are you ?

Friskeney. We are tenants of the land.

Bingham. And we ask judgment, since you cannot show that you are privy to Martin, and you are a total stranger and show no assignment. Judgment whether you who are a stranger can bar us from our action.

Friskeney. Let us be at one about the deed. Grant it or deny it, and then we will plead with you.

Bingham. We put forward the deed which witnesses the lease, which lease we will aver if you wish to deny it. And you show nothing in proof that you are privy to Martin, nor any assignment. We ask judgment.

Malberthorpe. You put forward a deed in evidence which is your own deed, and with that we have nothing to do ; but the tenant puts forward your own deed which witnesses fee in the person of Martin, and this extinguishes your action. We ask judgment whether without an answer to this deed you ought to be answered.

Bereford C.J. He puts forward a writing indented which witnesses the lease ; and you wish to rebut him from his action by a deed made to this man to whom you are a stranger, and you show nothing concerning an assignment. Therefore he has no need to answer that deed.

Bingham. If he were impleaded and vouched us as assignees, he would not be warranted without showing a deed of assignment. Judgment whether by any such deed to which he is a stranger he can bar us from our action without showing a charter of assignment.

Ber. Jeo vous saveroi mettre en cas ou il barreit.

Denum. En cas si deit ceo qe s'il ust fait ceste chartre[1] denz son terme[2] ceste chartre lui barreit auxi[3] avant com une quiteclamance.

Et *Ber.* hoc affirmauit etc.

II.[4]

En un bref d'entré *ad terminum qui preteriit* de lees fet par son pere a un C. etc.

Malm. Quei avez de terme ?

Kyng. mist avaunt un escript qe tesmoigna terme.

Malm. Vostre pere qi heir vous estes dona les tenementz a C. a avoir et tenir a ly et a ses heirs par cest etc. qe cy est. Jugement si encountre le fet vostre pere qi heir vous estes accioun pussez avoir.

Kyng., q'il le lessa solonc le purporte del escript a terme etc., prest etc.

Malb. Est ceo le fet vostre pere ou noun ?

Kyng. Jeo n'ay mye mestier a ceo respondre qe vous n'estes pas celi a qi la chartre deust estre fet ; et autrement ne vous fetes vous privé a ly. Jugement.

Ber. Si vous voillez averrer qe les tenementz furent donez en fee solonc le purporte de la chartre, c'este une voye a pleder.

Malm. Nous mettoms avaunt la chartre pur barre.

Berr. Vous avez demaundé ceo q'il ad du terme et il en affermaunt sa accioun ad mis avaunt escript de terme, et vous mettez avaunt un fet a quei vous n'estes pas partie ne privé par quei pur rien qe vous avez dit unqore il est a son terme. Mès put suyre un fet et avoir diverse respons et avoir divers issue etc.

The Record of the Case.

De Banco Rolls, 4 Edw. II., Trinity (No. 187), r. 163d., Suffolk.

Iohannes filius Elene de Cretynge per attornatum suum petit uersus Willelmum de Wynthorp' et Agnetem uxorem et Simonem filium eiusdem Agnetis unum messuagium uiginti et unam acras terre unam acram et unam

[1] *Ins.* en la seisine Martyn *P.* [2] *Om.* denz son terme *P.* [3] autresi *P.*
[4] From *M* (fol. 43 r°).

Bereford C.J. I could put to you a case where it would be a bar.

Denham. In this case,[1] if he had made this charter (when the tenements were in the seisin of Martin) and within his term, this charter would bar him just as much as a quitclaim.

Bereford C.J. affirmed this etc.

II.

A writ of entry *ad terminum* on a lease made by the demandant's father[2] to one [Martin] etc.

Malberthorpe. What have you of the term?

Bingham[3] put forward a writing which witnessed the term.

Malberthorpe. Your father whose heir you are gave the tenements to [Martin] to have and to hold to him and his heirs by this writing etc. which is here. We ask judgment whether you can have an action against the deed of your father whose heir you are.

Bingham. That he leased according to the purport of the writing for a term etc., ready etc.

Malberthorpe. Is this the deed of your father or not?

Bingham. I have no need to answer that, for you are not he to whom the charter is expressed to have been made; and besides you do not make yourself privy to him. We ask judgment.

Bereford C.J. If you wish to aver that the tenements were given in fee according to the purport of the charter, that is one way of pleading.

Malberthorpe. We put forward the charter as a bar.

Bereford C.J. You have asked what he has of the term; and in affirmation of his action he has put forward a writing concerning the term; and you put forward a deed to which you are neither party nor privy. Therefore for anything which you have said he is still at his term. But a deed may be sued, and there may be different answers and different issues etc.

Translation of the Record.

For the reference, see opposite.

John the son of Ellen of Cretinge by his attorney demands against William of Wynthorp and Agnes his wife and Simon the son of the same Agnes one messuage twenty-one acres of land one acre and a rood of meadow one acre

[1] The meaning of 'si deit ceo' is not clear.

[2] The report is incorrect here. The lease was made by the demandant himself. See the Record.

[3] It is assumed that *King.* in this report is an error for *Bingh.* See the first report.

The Record of the Case—*continued.*

rodam prati unam acram pasture et tres denarratas redditus cum pertinenciis in Eston Gosebek et Hemmyngeston in que iidem Willelmus et Agnes et Simon non habent ingressum nisi post dimissionem quam predictus Iohannes inde fecit Martino de Crowecroft ad terminum qui preteriit et que post terminum illum ad predictum Iohannem reuerti debent etc.

Et Willelmus et Agnes per attornatum et predictus Simon per custodem suum ueniunt. Et predicti Willelmus et Agnes dicunt quod ipsi nichil habent in predictis tenementis etc. et idem Simon respondet ut solus tenens etc. et defendit ius suum quando etc. et bene defendit quod predictus Iohannes non dimisit ei predicta tenementa ad aliquem terminum etc. immo in feodum etc. Et de hoc ponit se super patriam. Et Iohannes similiter etc.

Ideo preceptum est uicecomiti quod uenire faciat hic in crastino sancti Martini xij etc. per quos etc. et qui nec etc. ad recognoscendum etc. quia tam etc.

11. BYDYKE *v.* THE PRIORESS OF KILBURN.

I.[1]

Cui in uita, ou le tenaunt out recoveri mesme les tenementz par le *cessauit* vers le baroun de dreit sa femme par defaute après defaute.

William le fiz Piers etc. porta le *cui in uita* vers la priouresce de C. et dit 'en les queux ele n'ad entré sinoun pus le lees qe B. de B. baroun M. miere l'avantdit W. qi heir etc. de ceo en fist a C. priouresce de C. predecessour mesme ceste priouresce.'

Herle. La ou il portent cesti bref[2] etc. Sire, vous avetz cy l'attourné la priorasse qe fust etc. et vous dioms q'ele est deposé, issint q'ele n'est pas priorasse. Jugement du bref.

Hing. Ele puet estre deposé par le covent et[3] par collusion entre eux. Jugement.

Herle. Sire, nous vous dioms q'ele est privé par les ordinaries et par certeyn cause. Jugement du bref.

Ber. Quei de ceo ?

Hervi.[4] Si cest excepcion tendreit lieu, jammes n'averoit homme recoverir vers le abbé priour ne prioresse.

Ber. Dites outre.

Scrop. La ou il dient qe nous entrames pus le lees etc. nous vous dioms qe nous entrames par jugement de ceste court.[5] Jugement de bref.

[1] From *B*, collated with *G*, *M* and *R*. [2] *Ins.* vers la priorasse *G*, *M*. [3] *Ins.* ceo *G*, *R*. [4] Kyng. *M*. [5] *Ins.* et nent pus le lees etc. Et demaundoms *M*.

Translation of the Record—*continued.*

of pasture and three pence of rent with the appurtenances in Eston Gosbeck [1] and Hemingstone into which the same William and Agnes and Simon have not entry save after the demise which the aforesaid John made thereof to Martin of Crowecroft for a term which is passed and which after that term ought to revert to the aforesaid John etc.

And William and Agnes come by their attorney and the aforesaid Simon by his guardian. And the aforesaid William and Agnes say that they have nothing in the aforesaid tenements etc.; and the same Simon answers as sole tenant etc. and denies John's right when etc. and well he denies that the aforesaid John demised the aforesaid tenements to him for any term etc.; but he demised them in fee etc. And of this he puts himself upon the country. And John likewise etc.

Therefore the sheriff is ordered to cause to come here on the morrow of St. Martin twelve etc. by whom etc. and who neither etc. to make recognition etc. because as well etc.

11. BYDYKE *v.* THE PRIORESS OF KILBURN.[2]

I.

A writ of *cui in uita*. The tenant had recovered the same tenements by the *cessauit* against the husband in right of his wife by default after default.

[Henry of Bydyke] etc. brought the *cui in uita* against the prioress of [Kilburn] and said 'into which she has not entry save after the lease which [Adam of Bydyke] the husband of [Joan] the mother of the aforesaid [Henry] whose heir he is made thereof to [Agnes] the prioress of K. the predecessor of this same prioress.'

Herle. Sir, whereas they bring this writ etc. you have here the attorney of the prioress, who was etc., and we tell you that she has been deposed, so that she is not the prioress. Judgment of the writ.

Hengham. She might have been deposed by the convent and by collusion between them. We ask judgment.

Herle. Sir, we tell you that she was deprived by the ordinaries and for a certain cause. We ask judgment of the writ.

Bereford C.J. What of that?

Stanton J. If this exception were to be allowed, a man would never recover against an abbot, a prior or a prioress.

Bereford C.J. Say something else.

Scrope. Whereas they say that we entered after the lease etc., we tell you that we entered by judgment of this court. Judgment of the writ.

[1] Gosbeck, six miles north of Ipswich, seems to have been known as Eston Gosebek in the Middle Ages (*Feudal Aids*, v. 54).

[2] This is *Fitz.* Book i. fol. 262, *Cui in uita*, No. 22.

Hunt. Par quel jugement ?

Herle. Ditez vous par quel jugement.

Toud. Vous dites qe vous entrastes par jugement par quei a vous est a dire coment et par quel jugement.

Ber. a *Herle.* Vous avetz parlé de jugement dount il vous covent dire par quel jugement.

Herle. Sire, nous vous dioms qe B. et M. tindrent de la prioresse de C. par certeynz services et cesserent par ij anz. La prioresse porta le *cessauit* vers B. qe fist defaute après defaute, par quei nous[1] priames seisine de terre. Et adonqe issi fut enquys par enqueste d'office si le demaundant avoit dreit et si le tenant fit defaute[2] par collusion solom statut ou noun et issit bref pur faire venir toux les seignours *mediatos et immediatos* pur moustrer lour evidences al enqueste, s'il sussent nule chose dire si[3] les tenementz furent perduz par collusion solom l'estatut ou noun ; ou trové fust qe le recoverir ne fust mye par collusion, eynz qe les tenemenz furent[4] tenuz de la prioresse de dreit. Jugement.

Toud. Sire, nous vous dioms qe ceo fust le dreit et le heritage nostre miere etc. Jugement, si par my le cesser nostre baron,[5] qe ne purra par nul fait[6] desheriter sa femme saunz fyn levé etc. nous puisse d'accioun barrer.

Herle. Nous recoverames par jugement de ceste courte le quel jugement esta unqore en sa force ; et le verdit del enqueste auxint en sa force.[7] Jugement s'il puissent accioun aver.

Ing. Cesti bref nous est doné par statut, qe si le baroun perde par defaute ou voleit rendre qe la femme avera son recoverir.

Ber. A noun deu, vous estes un degre plus avant qe la femme ne serroit.

Toud. Bref est doné al heir par statut.

Ber. Vous pernetz statut qe oevre pur vous, mès vous ne pernez mye cel estatut qe oevre encontre vous, qe l'estatut de Gloucestre dit qe si le tenant veigne avant jugement rendu et voille rendre[8] les arrerages, soit resceu et sinoun soient les tenementz encoruz *imperpetuum*, et ele par jugement recoveri. Coment voletz vous defaire ceo jugement ?

Toud. Nul fait qe le baroun pout faire ne pout[9] desheriter la femme ne ses heirs saunz fyn etc. par quei nous n'entendoms mye qe la defaute le baroun nous deive barrer. Jugement.

[1] *Ins.* demaundoms jugement de la defaute et *M.* [2] *Om.* le . . . defaute. *Ins.* la defaute fut fet pur perdre *M.* [3] qe *M.* [4] *Om.* perduz . . . furent *R.* [5] *For* nostre baroun *subs.* le baroun nostre miere *M.* [6] *Ins.* q'il porra fere *G, M, R.* [7] *Om.* et le . . . force *R.* [8] recorder *B.* [9] *Ins.* ne ne deit *G, M, R.*

Huntingdon. By what judgment?

Herle. It is for you to say by what judgment.

Toudeby. You say that you entered by judgment. Therefore it is for you to say how you entered and by what judgment.

Bereford C.J. (*to Herle*). You have spoken of a judgment. Therefore it is for you to say by what judgment.

Herle. Sir, we tell you that [Adam and Joan] held of the prioress of K. by certain services, and they ceased therefrom for two years. The prioress brought the *cessauit* against [Adam] who made default after default, whereupon we prayed seisin of the land. And so it was then inquired by an inquest *de officio* whether the demandant had right and whether the tenant made default by collusion in the terms of the statute[1] or not; and there issued a writ to make all the lords mediate and immediate come to show their evidences at the inquest, and if they knew anything to say whether the tenements were lost by collusion in the terms of the statute or not. It was found that the recovery was not by collusion but that the tenements were held of the prioress as of right. We ask judgment.

Toudeby. Sir, we tell you that these tenements were the right and inheritance of our mother etc. We ask judgment whether by the cesser of [her] husband who could not by any deed disinherit his wife without a fine levied etc. she can bar us from our action.

Herle. We recovered by judgment of this court, and this judgment is still in force; and the verdict of the inquest is also in force. We ask judgment whether they can have an action.

Hengham. This writ is given us by statute[2] which provides that if the husband lose by default or intend to surrender, the wife shall have her recovery.

Bereford C.J. In the name of God; you are a step further forward than the woman would be.

Toudeby. The writ is given to the heir by statute.

Bereford C.J. You take the statute which works for you, but you do not take the statute which works against you, for the Statute of Gloucester[3] says that if the tenant comes before judgment is given and wishes to render the arrears let him be received, but if not let the tenements be lost forever. And the prioress has recovered by judgment. How will you undo that judgment?

Toudeby. No deed which the husband can make can disinherit either the woman or her heirs without a fine etc. Therefore we do not think that the default of the husband ought to bar us. Judgment.

[1] Statute of Mortmain. [2] Statute of Westminster II. 13 Edw. I. c. 3 (default).
[3] Statute of Gloucester, c. 4.

Ber. C'est en nos agardes. Et pur ceo qe c'est un novel cas nous nous aviseroms. Et jeo vous loe qe vous parlez de pees entre vous taunt dementres.

II.[1]

Ou le fiz e heir porta la *cui in uita* de ceo qe le baroun sa mere et sa mere perdirent par defaute après defaute.

Un Adam Pedyn porta sun *cui in uita* de la seisine sa mere vers une prioresse de C. pendant quel plee la prioresse fust remué.

Hengham. Nous prioms qe la prioresse soit demandé.

Hunt. Ele est remué.

Hervi. Si tiel remuement abatereit le bref jammes vers priour ne abbé ne rescovereit homme terre.

Hunt. Ele est remué par ordinaire du lieu e autre prioresse creé, par quei il semble q'ele deit estre resomoné.

Hervi. Vous n'averez jammes tiel resommons hors de cienz.

Hunt. Vous avez bien entendu coment il portent cestui bref du lees le baron. A ceo vous dioms nous qe l'entré qe nous avom si est par jugement etc.

Heng. Par queu jugement ?

Par defaute après defaute e issi qe Adam Peddyn e Agnes sa femme tiendrent ceux tenemenz de une Agnes jadis prioresse de C. com del dreit de sa eglise de C. par fealté e suite de court e par les services de xx souz par an des queux etc. ele fust seisi etc. dount Adam et Agnes cesserent par ij anz par quei la prioresse porta son *cessauit.* A queu bref Adam e Agnes fyrent defaute après defaute.

Hengham. Nous prioms l'oy del original ceo qe nous est granté par statut a pleder en le dreit pur rescoverir par defaute après defaute etc.

Hunt. A ceo ne avendrez mie qar après nostre rescoverir bref fust mandé a visconte de garnir les seignurages *mediatis et inmediatis* pur venir s'il savoient rien dire a tel rescoverir en mort mein. Et estre ceo le visconte fist venir devant justices cienz chivalers e altres francs hommes a conustre par lour serement si ceux tenemenz furent le droit de sa eglise ou collusion entre le tenant e le demandant, les queux jurreez dissoient qe teu rescoverir ne fu nent par collusion einz le dreit

[1] From *Y* (fol. 99 v°).

BEREFORD C.J. It is for us to award; and because this is a new case we will be advised. I counsel you that you discuss a settlement between you meanwhile.

II.

Where the son and heir brought the *cui in uita* to recover land which the husband of his mother and his mother lost by default after default.

[Henry of Bydyke] brought his *cui in uita* on the seisin of his mother against a prioress of K., and during the plea the prioress was removed.

Hengham. We pray that the prioress be called.

Huntingdon. She has been removed.

STANTON J. If such a removal should abate a writ, neither a prior nor an abbot would ever recover land.

Huntingdon. She was removed by the ordinary of the place, and another prioress created, therefore it seems that the prioress ought to be resummoned.

STANTON J. You will never have such a resummons from here.

Huntingdon. You have heard how they bring this writ on the lease of the husband. To that we say that the entry which we have is by judgment etc.

Hengham. By whose judgment?

[*Huntingdon.*] By default after default. Adam [of Bydyke] and [Joan] his wife held these tenements of one Agnes lately prioress of K. as in the right of her church of K. by fealty and suit of court and by the services of twenty shillings a year, of which etc. she was seised etc. from the render of which services Adam and [Joan] ceased for two years, for which cesser the prioress brought her *cessauit*. On this writ Adam and [Joan] made default after default.

Hengham. We pray oyer of our original writ which is granted to us by statute[1] for pleading in the right to recover on a default after default etc.

Huntingdon. At that you will not arrive, for after our recovery a writ was sent to the sheriff to warn the lords mediate and immediate to come if they had anything to say on this recovery in mortmain; and besides these the sheriff caused to come before the Justices here knights and other free men to make known on their oaths whether these tenements were the right of the church of the prioress or whether there was collusion between the tenant and the demandant; and the jury said that this recovery was not by collusion, but that the tenements were the right of the church of the prioress etc. And, seeing that this

[1] Statute of Westminster II. 13 Edw. I. c. 3.

de la eglise la prioresse etc. E demandoms jugement del houre qe ceo verdit esta en sa force si accion puissez avoir.

Hengham. Nous enparleroms. E revynt e dit :—Vous avez bien entendu coment il ount respondu a nostre accion, e dient q'il ont entré par jugement. A ceo responoms nous qe ceo jugement nous ne deit grever, qar le statut Westmoustier le second dist qe si tenants en dowere a terme de vie ou en fee taillé perdent tenemenz par defaute après defaute, ceux a qi la reversion apent averount lour bref d'entré du lees fet etc.

Hervy. Veez le bref. E le bref dist :— Precipe priorisse de C. quod reddat Henrico Peddyn unum messuagium etc. et in quod non habet ingressum nisi post dimissionem quam A. Peddyn inde fecit cuidam Agneti priorisse de C. predecessori etc. cui Agnes mater predicti H. cui ipsa in uita etc.

Hervy. Ore estes vous en un degre plus loinz qe l'estatut ne suppose.

Hengham. Tut est une reversion qe regarde la mere e le fiz.

Hervi. N'est ceo un bref doné sur l'estatut ? e fet le statut nule mencion del fiz ?

Bereford. Vous volez eider vous par statut de W. e il vous dient qe le rescoverir se fist par un *cessauit per biennium*, q'est foundu sur l'estatut de Gloucestre, qe dit si le tenant viegne devant jugement e rende les arrerages q'il puet salver sa tenance, e ceo put vostre mere aver fet, e si noun soit forclos a touz jours.

Touth. Par nul lei le trespas ne le rendre le baron ne forclost la femme estre fin, la ou ele est confessé en court qe porte recorde, *ergo* le cesser le baron durant la coverture ne barre nient la femme ne ses heirs.

Bereford. Primes dites nous si le rescoverir se fist, e qe le baron ne lessa en altre manere.

Hengham. Nous ne poms dedire.

Bereford. Pur ceo qe ceo est une novele ley ore est a nous a ver si cele rescoverir soit barre etc.

III.[1]

Un Johan porta son bref d'entré vers la prioresse de Newelton etc. et demaunda certeyn tenementz en les queux mesme ceste prioresse

[1] From *T* (Mich. 5 Edw. II).

verdict remains in force, we ask judgment whether you can have an action.

Hengham. We will imparl. He came back and said :—You have well heard how they have answered our action and say that they entered by judgment. To that we answer that this judgment ought not to harm us, for the Statute of Westminster the second says that if the tenant in dower for term of life or in fee tail lose the tenements by default after default, those to whom the reversion belongs will have their writ of entry on the lease made etc.

Stanton J. Consider the writ. The writ said :—Command the prioress of K. that she render to Henry [Bydyke] a messuage etc. and into which she has not entry save after the lease which Adam Bydyke [sometime the husband of Joan the mother of Henry] made to one Agnes the prioress of K. the predecessor etc. whom she the said [Joan] the mother of the aforesaid Henry in his lifetime could not gainsay etc.

Stanton J. Now you are one step more distant than the statute supposes.

Hengham. It is all one reversion as regards the mother and the son.

Stanton J. Is not this a writ given upon the statute, and does the statute make any mention of the son ?

Bereford C.J. You wish to aid yourselves by the Statute of Westminster, and they tell you that the recovery was made by a *cessauit per biennium* which is founded on the Statute of Gloucester[1] and says that if the tenant come before judgment and render the arrears he can save his tenancy. This your mother could have done, and if she did not do so, then she is to be foreclosed for ever.

Toudeby. There is no law whereby the trespass or the render of the husband forecloses the wife without a fine, on which she makes acknowledgement in a court which bears record, therefore the cesser of the husband during the coverture does not bar the wife nor her heirs.

Bereford C.J. First of all tell us whether the recovery was made, and whether the husband leased in no other manner.

Hengham. We cannot deny it.

Bereford C.J. Because this is a new law, it is for us to see whether this recovery is a bar etc.

III.

One [Henry] brought his writ of entry against [Maud] prioress of [Kilburn] etc. and demanded certain tenements into which this same

[1] Statute of Gloucester, c. 4.

n'ad entré si noun pus le lees qe un Robert baroun Agneis mere mesme cesti Johan qi heir il est a qi ele en sa vie contredire ne pout de ceo en fit a une Agneis jadiz prioresse de Kelleboroun predecessour mesme ceste prioresse.

Cant. Nous vous dioms qe M. n'est pas prioresse. Jugement du bref.

Ing. Prioresse jour du bref purchasé.

Cant. Ele fut prioresse jour du bref purchasé, mès ele est pus privé par ordenarie. Jugement etc.

Ing. Ele ad un attourné en court, et prioms q'il respoigne, ou qe vous nous grauntez le Graunt *Cape* par sa defaute.

Cant. Le attourné est prest etc. a respoundre s'il oseit desicom ele est privé par ordinarie.

Scrop. Si le bref soit porté vers abbé ou priour et seit remué, le bref ne se abatera mye, mèz si null bref par eux seit porté et seit remué le bref s'abatera. Et pur ceo responez.

Cant. La ou il dient q'ele n'ad entré si noun pus le lees fet a A. sa predecessour, nous vous dioms q'ele n'avoit entré par Thomas baroun Aigneis mere mesme cesti Johan, einz par agarde de court. Jugement.

Ing. Par quele jugement ?

Cant. Ceo est a vous a savoir par quel jugement vostre auncestre perdy.

Ing. Vous avez dit qe vostre predecessour entra par jugement. Il put estre qe par defaute, dount il couvent moustrer vostre dreit solom le primer bref, qe ceo est un cas de statut. Par quei il vous covent dire par quel jugement.

Cant. Agneis nostre predecessour porta un *cessauit per biennium* vers Robert et Agneis en quel il firent defaute après defaute. La court dota d'estre desceu qe la chose par celle defaute devereit devenir en mort mayn par quei enqueste fut pris par forme de statut, par verdit de quele enqueste trové fut qe Robert et Aigneis tynderent de nostre predecessour et qe lez tenementz gisirent friches xij aunz nent overtz a la destresce et qe Robert et Aigneis avoient cessée par ij aunz. Et issi recovera nostre predecessour. Jugement de cesti bref.

Ing. Coment qe la court prist une enqueste ceo fut une enqueste de office et quel recoverir qe vous alleggez, ceo fut par defaute, par quei nous sumes en cas de statut. Et pur ceo moustrez vostre dreit solom la nature del primer bref.

prioress had not entry save after the lease which one [Adam], the husband of [Joan] the mother of this same [Henry] whose heir he is, which Adam she in his lifetime could not gainsay, made thereof to one Agnes lately prioress of Kilburn predecessor of this same prioress.

Cambridge. We say that Maud is not the prioress. We ask judgment of the writ.

Hengham. She was prioress on the day when the writ was purchased.

Cambridge. She was prioress on the day when the writ was purchased; but she has since been deprived by the ordinary. We ask judgment etc.

Hengham. She has an attorney in court. We pray that he may answer, or that you grant us the grand *cape* for his default.

Cambridge. The attorney would be ready to answer etc. if he dared, seeing that his client has been deprived by the ordinary.

Scrope J. If a writ be brought against an abbot or prior and he be removed the writ will not abate; but if a writ be brought by one of them, and he be removed, the writ will abate. Therefore answer.

Cambridge. There where they say that she has not entry save after the lease made to Agnes her predecessor we tell you that she had not entry by [Adam] the husband of [Joan] the mother of this same [Henry], but by an award of the court. We ask judgment.

Hengham. By what judgment had she entry?

Cambridge. It is you who should know by what judgment your ancestor lost.

Hengham. You have said that your predecessor entered by judgment. It may be that she entered by default. Therefore you must show your right in accordance with the first writ, for this is a case of the statute. Therefore you must say by what judgment she entered.

Cambridge. Agnes our predecessor brought a *cessauit per biennium* against [Adam] and [Joan] on which they made default after default. The court doubted about being deceived, for the property was bound by that default to come into mortmain; and therefore an inquest was taken by the form of the statute.[1] By the verdict of that inquest it was found that [Adam] and [Joan] held of our predecessor and that the tenements had lain fallow twelve years and not open to distress, and that [Adam] and [Joan] had ceased to render the services for two years; and so our predecessor recovered. We ask judgment of this writ.

Hengham. Although the court took an inquest, it was an inquest *de officio*, and the recovery which you allege was by default; therefore we are in the case of the statute. Therefore show us your right according to the nature of the first writ.

[1] Statute of Westminster II. c. 32.

Cant. Desicom vous avez conu le recoverir le quel recoverir est final, jugement.

Toud. Statut voet qe recoverir par defaute vers tenant a terme de vie, ne par la ley d'Engletere ne par fee taillé ne vers homme ne femme del dreit la femme ne serrount my si prejudicial qe ceus a qi la reversioun appent, et femme après le decees le baroun eyent recoveryr par bref foundu sur statut, en quel cas il covent le tenant moustrer soun dreit. Et desicom il ount conu lour recoverir par defaute, jugement.

Cant. Donqe conissez le recoverir?

Toud. Nous ne poumes dedire, mèz nous vous dioms qe ceo fut par defaute, et prioms qe vous moustrez vostre dreit.

Berr. Vous pernez l'estatut de Westmustre le secounde pur vous et vous entrelessez l'estatut de Gloucestre q'est encontre vous qe dit qe en le *cessauit per biennium* si le tenant ne veigne avaunt jugement rendu et tent sez arrerages, qe lez tenementz sount encorus a toux jours, mès ovesqe ceo vous estez un poynt plus avant qe ne serreit la femme si ele fut en vie etc. et demaunda etc. Et vous avez conu le recoverir d'un part et d'autre, et n'avez autre chose a dire. Pur ceo aviseroms de cel jugement, qe la ou bref est porté vers homme et sa femme a la commune ley, et perdent par defaute, statut ovre bien pur la femme; mès ceo est en especial cas, qe ceo recoverir fut en un *cessauit* q'est doné par statut.

IV.[1]

Un A. porta bref d'entré vers B. qi demaunda certeynz tenementz etc. en les queux il n'avoit entré si noun puis le lees qe un Willem jadis baroun E. mere l'avauntdit A. qi heir etc. il est de ceo en fit a qi ele en sa vie etc.

Mal. Nous vous dioms qe W. ne lessa point. Mès vous dioms qe W. et E. sa femme tindrent de nous cum del dreit E., et pur ceo qe lez tenementz giserent frichez si portames nous le *cessauit* et issint recoverymes par jugement. Et demaundoms jugement si nous a ceti bref devoms respoundre.

Toud. Nous ne pooms altre bref aver en la chauncellerie. E d'autrepart statut doune bref d'entré en le cas ou le baroun perde le

[1] From *P.*

Cambridge. As you have acknowledged the recovery which is final, we ask judgment.

Toudeby. The statute[1] says that a recovery by default against a tenant for a term of life, or by the law of England or in fee tail or against a man and a wife in the right of the wife shall not be so prejudicial but that they to whom the reversion belongs, and a woman after the death of her husband, shall have a recovery by a writ founded on the statute, in which case it is necessary that the tenant show what right he has. Seeing that they have acknowledged that their recovery was by default we ask judgment.

Cambridge. Then you acknowledge the recovery?

Toudeby. We cannot deny it; but we say that it was by default, and pray that you show what right you have.

Bereford C.J. You take the Statute of Westminster the second as in your favour; and you omit the Statute of Gloucester[2] which is against you, and says that on a *cessauit per biennium* if the tenant does not come before judgment is given, and tender the arrears, the tenements are lost forever. Moreover you are a step further forward than the woman would be, if she were alive etc., and made her demand etc. And you have acknowledged the recovery on both sides; and you have no more to say. Therefore we will be advised on our judgment; for where a writ is brought against a man and his wife at the common law, and they lose by default, the statute works well for the wife; but here we are in a special case, for this recovery was in a *cessauit* which is given by statute.

IV.

One A. brought a writ of entry against B. and demanded certain tenements etc. into which B. had not entry save after the lease which one William lately husband of E. the mother of the aforesaid A. whose heir he is etc. made thereof, which William she in his lifetime could not gainsay etc.

Malberthorpe. We tell you that W. did not lease. But we tell you that W. and E. his wife held of us as in the right of E.; and because the tenements lay fallow, we brought the *cessauit*, and so we recovered by judgment. And we ask judgment whether we must answer this writ.

Toudeby. We can have no other writ in the chancery. Besides a statute[2] gives us a writ of entry in the case where a husband loses

[1] Statute of Westminster II. 13 Edw. I. c. 3 (default).

[2] Statute of Gloucester, 6 Edw. I. c. 4.

dreit sa femme ou voille rendre, qe la femme eit soun *cui in uita* q'est garraunti par statut par quei si nous ne seioms resceu a ceti bref, si sumes nous cum nous fumes a la commune ley.

Ber. Il vous dit q'il est entré en ceux tenementz par jugement, nomement, par defaute après defaute en le *cessauit*, ou si le tenaunt ne vygne avaunt jugement rendu lez tenementz sount encoruz a touz jours. E le statut, dount vous parlez, si parle la ou les tenementz sount perduz par bref a la commune lei, mès il est entré par jugement du bref q'est doné a la ley especiale par quei vous n'estes pas en cas de statut.

Toud. Meschef serroit si le baron perdereit le dreit sa femme par defaute après defaute, ou il n'ad riens si noun par resoun de la coverture, saunz ceo qe le heir la femme fut resceu.

Et termino Hillarii anno sexto dictum fuit tenenti q'il suyt bref de fere venyr le primer bref porté vers le baroun et la femme. Et ita fecit per breue de cancellaria.

Malm. Nous dioms qe l'enqueste fut prise sur la collusioun ou trové fut qe il tindrent de la prioresse et qe lez services furent areres etc. et qe lez tenementz gisirent frichez etc.

Hengham. Ceste enqueste fut *de officio* et cel recoveryr fut par defaute, par quei nous sumes en cas de statut. Mostrez vostre dreit solum le primer bref.

Et sic fecit etc.

The Records of the Case.

I.

De Banco Rolls, 4 Edw. II., Trinity (No. 187), r. 1d., Middlesex.

Henricus de Bydyk' per attornatum suum petit uersus Matillidem priorissam de Keleburne uiginti acras terre cum pertinenciis in Chelchheth' ut ius et hereditatem suam et in quas eadem priorissa non habet ingressum nisi post dimissionem quam Adam de Bydyk' quondam uir Iohanne de Bydyk' matris predicti Henrici cuius heres ipse est cui ipsa in uita sua contradicere non potuit inde fecit Agneti quondam priorisse de Keleburne etc.

Et priorissa per attornatum suum uenit et defendit ius suum quando etc. et bene defendit quod predicta Agnes quondam priorissa etc. non habuit ingressum in predictis tenementis ex dimissione predicti Ade quondam uiri etc. immo per iudicium curie regis etc. Dicit enim quod predicta Agnes quondam priorissa de Keleburne predecessor etc. alias coram I. de Metingham et sociis suis iusticiariis regis de banco apud Eboracum scilicet termino Trinitatis anno regni regis Edwardi patris domini regis nunc xxix tulit breue ipsius domini regis *cessauit per biennium* uersus ipsos Adam et Iohannam uxorem eius matrem predicti Henrici etc. de predictis tene-

the right of his wife or wishes to surrender, so that the wife has her *cui in uita* which is thus warranted by the statute. Therefore if we are not received on this writ, we are as we were at the common law.

Bereford C.J. He tells you that he entered upon these tenements by judgment, namely by default after default on a *cessauit*, where if the tenant does not come before judgment is delivered the tenements are lost forever. The statute whereof you speak applies where the tenements are lost by a writ at common law ; but the tenant entered by judgment on a writ which is given at the special law, wherefore you are not in the case of that statute.

Toudeby. It would be a hardship, if the husband were to lose the right of his wife by default after default in a case where he has nothing save by reason of coverture, without the heir of the wife being received.

In Hilary term in the sixth year the tenant was told to sue a writ to cause the first writ brought against the husband and the wife to come before the court. This was done by a writ from the chancery.

Malberthorpe. We say that the inquest was taken upon the collusion, and it was found that they held of the prioress and that the services were in arrear etc. and that the tenements lay fallow etc.

Hengham. That inquest was *de officio*, and that recovery was on a default, therefore we are in the case of the statute. Show your right according to the first writ.

And so he did etc.

Translation of the Records.

I.

For the reference, see opposite.

Henry of Bydyke by his attorney demands against Maud the prioress of Kilburn twenty acres of land with the appurtenances in Chelsea as his right and inheritance and into which the same prioress has not entry save after the demise which Adam of Bydyke sometime the husband of Joan of Bydyke the mother of the aforesaid Henry, whose heir he is, whom she in his lifetime could not gainsay, made thereof to Agnes sometime prioress of Kilburn etc.

And the prioress by her attorney comes and denies his right when etc. And well she denies that the aforesaid Agnes sometime prioress etc. had entry in the aforesaid tenements by the demise of the aforesaid Adam sometime husband etc. ; but indeed she had entry by judgment of the king's court etc. ; and she says that the aforesaid Agnes sometime prioress of Kilburn predecessor etc. heretofore before John of Metingham and his fellows the king's justices of the bench at York, to wit in Trinity term 29 Edw. I. brought the king's writ of *cessauit per biennium* against them the said Adam and Joan his wife the mother of the aforesaid Henry etc. concerning the aforesaid

The Records of the Case—*continued.*

mentis et tenementa illa recuperauit uersus eos per defaltam etc. in eadem curia etc. Et dicit quod per inquisicionem postmodum captam coram ipso I. de Metingham iusticiario etc. compertum fuit quod predicta tenementa tenebantur de ipsa priorissa et quod antecessores ipsius Iohanne a tempore quo non extat memoria tenuerunt predictam terram de ipsa priorissa et predecessoribus suis per seruicium uiginti denariorum per annum et quod predicta tenementa sunt ius ecclesie ipsius priorisse ea racione quod cessatum fuit de predicto seruicio per decem et octo annos et amplius ante impetracionem breuis ipsius priorisse etc. et quod nulla fuit fraus seu collusio etc. Et hoc parati sunt uerificare per recordum etc. Vnde cum predictus Henricus per breue suum supponat ipsam priorissam nunc non habuisse ingressum in predictis tenementis nisi post dimissionem quam predictus Adam quondam uir etc. inde fecit predicte Agneti quondam priorisse etc. que quidem Agnes priorissa etc. non intrauit per aliquam dimissionem etc. immo per iudicium curie in forma predicta, petit iudicium de breui etc.

Et Henricus dicit quod per huiusmodi recuperare per defaltam predicti Adam quondam uiri predicte Iohanne matris sue, cuius heres ipse est, habitum, seu per hoc quod idem Adam cessauit etc. precludi non debet a iure suo quin admittatur ad placitandum etc. super primo breui quod predicta Agnes priorissa etc. prius impetrauit uersus predictos Adam quondam uirum ipsius Iohanne et ipsam Iohannam de predictis tenementis iuxta formam statuti etc. maxime cum ingressus quem predicta priorissa optinuit per huiusmodi recuperare censeri debet quasi dimissio etc. nec breue de ingressu alterius forme sibi competit in hoc casu etc. Vnde petit iudicium etc.

Dies datus est eis de audiendo inde iudicio hic in crastino Animarum in eodem statu quo nunc etc.

Postea continuato processu hinc inde usque a die Pasche in xv dies anno regis nunc quinto uenerunt partes predicte per attornatos suos. Et dies datus est eis in octabis sancti Michaelis de audiendo iudicio suo etc. in eodem statu quo nunc, eo quod iudicium nondum etc.

II.

De Banco Rolls, 29 Edw. I., Trinity (No. 139), r. 160, Middlesex.

Agnes priorissa de Keleburne per attornatum suum optulit se quarto die uersus Adam Bedyk et Iohannam uxorem eius de placito uiginti acrarum terre cum pertinenciis in Chelchethe quas clamat ut ius ecclesie sue de Keleburne. Et ipsi non ueniunt et alias fecerunt defaltam scilicet a die sancti Michaelis in unum mensem postquam comparuerunt hic in curia. Et uadiauerunt inde legem etc. ita quod preceptum fuit uicecomiti quod caperet predictam terram in manum domini regis etc. et quod summoneret eos quod essent hic in octabis Purificacionis beate Marie audituri inde iudicium etc.

Translation of the Records—*continued.*

tenements and she recovered the same against them by default etc. in the same court etc. And she says that by an inquisition afterwards taken before him the said John of Metingham justice etc. it was found that the aforesaid tenements were held of her the said prioress and that the ancestors of her the said Joan from a time whereof there is no memory had held the aforesaid land of her the said prioress and her predecessors by the service of twenty pence a year and that the aforesaid tenements were the right of the church of her the said prioress, for the reason that there had been a cessation from the aforesaid service for eighteen years and more before the purchase of the writ by her the said prioress etc. and that there was no fraud or collusion etc.; and this [she is] ready to aver by the record. Whereupon, since the aforesaid Henry by his writ supposes that she the said prioress had no entry in the aforesaid tenements save after the demise which the aforesaid Adam sometime the husband etc. made thereof to the aforesaid Agnes sometime prioress etc. and this Agnes the prioress etc. entered not by any demise etc. but by judgment of the court in the form aforesaid, she asks judgment of the writ etc.

And Henry says that by a recovery of this kind by the default of the aforesaid Adam sometime the husband of the aforesaid Joan his mother, whose heir he is, or by the fact that the same Adam ceased etc., he ought not to be precluded from his right but that he should be admitted to plead etc. upon the first writ which the aforesaid Agnes the prioress previously purchased against the aforesaid Adam sometime the husband of her the said Joan and this Joan herself concerning the aforesaid tenements according to the form of the statute[1]; especially since the entry which the aforesaid prioress obtained by such a recovery ought to be treated as a demise etc. and no writ of entry of another form avails him in this case etc. Whereupon he asks judgment etc.

A day is given them here for hearing their judgment thereof on the morrow of All Souls in the same state as now etc.

Afterwards, process on either side having been continued, until the quindene of Easter 5 Edw. II., the aforesaid parties came by their attorneys, and a day is given them here on the octave of St. Michael for hearing their judgment etc. in the same state as now, on the ground that judgment has not yet etc.

II.

For the reference, see opposite.

Agnes the prioress of Kilburn by her attorney offered herself on the fourth day against Adam Bedyk and Joan his wife on a plea of twenty acres of land with the appurtenances in Chelsea which she claims as the right of her church of Kilburn. And they come not, and heretofore they made default, to wit, a month after Michaelmas after they had appeared here in court, and they wagered their law thereof etc. so that the sheriff was ordered to take the aforesaid land into the lord king's hand, and to summon them to be here on the octave of the Purification of the Blessed Mary to hear judgment

[1] Statute of Westminster II. 13 Edw. I. c. 3.

The Records of the Case—*continued.*

Ad quem diem uicecomes mandauit quod breue tarde uenit etc. ita quod tunc preceptum fuit uicecomiti sicut prius quod caperet predictam terram in manum domini regis etc. et quod summoneret eos quod essent hic ad hunc diem audituri iudicium etc. Et uicecomes modo mandat quod terra capta est etc. et quod summoniti etc. Ideo consideratum est quod predicta priorissa recuperet inde seisinam suam uersus eos per defaltam et Adam et Iohanna in misericordia. Set cesset execucio seisine etc. quia dubitatur de fraude inter eos prelocuta contra statutum quo cauetur ne terre etc. ad manum mortuam etc. Preceptum est uicecomiti quod uenire faciat hic a die sancti Martini xv dies nisi I. de Metingham prius etc. xii etc. et qui predictam priorissam nulla etc. ad recognoscendum quale ius etc. et que etc. Et interim terram illam in manum domini regis capiat ita quod neuter etc. et quod de exitibus etc. et quod scire faciat capitalibus dominis mediatis et immediatis etc. quod tunc sunt hic etc.

Postea die Lune proxima post Annunciacionem beate Marie anno regis nunc tricesimo apud Crucem Lapideum extra muros Londonie coram R. de Hengham associato sibi W. de Broke milite uenerunt partes per attornatos etc. Et uicecomes scire fecit capitalibus dominis feodi etc. mediatis et immediatis etc. Et similiter iuratores uenerunt qui dicunt super sacramentum suum quod predicte uiginti acre terre tenentur de predicta priorissa et quod antecessores ipsius Iohanne a tempore quo non extat memoria tenuerunt predictam terram de predicta priorissa et predecessoribus suis per seruicium uiginti denariorum per annum ; et inde seisite fuerunt ut de iure ecclesie sue usque ad decem et octo annos et amplius quod predicti Adam et Iohanna predictam terram incultam iacere permiserunt et predictum seruicium soluere dedixerunt et quod infra tempus illud non potuit inuenire sufficientem districcionem in eadem terra etc. Et quod predicta priorissa in fraudem prelocutam non sequebatur in curia domini regis, set ad disracionandum ius suum per statutum de eo quod cessatum fuit de predicto seruicio faciendo per biennium ante impetracionem breuis etc. Ideo consideratum est quod predicta priorissa recuperet inde seisinam suam et Adam et Iohanna in misericordia etc.

12. GULDEFORD *v.* SELYDE.[1]

Un Alice porta son *cui ante diuorcium* vers Margery de B. etc.

Ing. La ou ele porte cesti bref vers nous, nous vous dioms qe un Richard fut seisi de ceux tenementz et les divisa a mesme cesti Margery vers qi etc. et a Willem et a Robert et a les heirs Robert, et nous n'avoms

[1] From *M.* This report, which occurs in none of the other manuscripts, is very faulty.

Translation of the Records—*continued.*

thereon etc. At which day the sheriff sent word that the writ came late etc. so that the sheriff was then ordered as before to take the aforesaid land into the lord king's hand and to summon them to be here at this day to hear judgment thereon etc. And the sheriff now sends word that the land has been taken and that they have been summoned etc. Therefore it is awarded that the aforesaid prioress recover her seisin thereof against them by the default, and that Adam and Joan be in mercy; but let execution of the seisin wait etc., because there is a doubt concerning fraud contrived between them against the statute, by which provision is made lest lands etc. come into mortmain etc. The sheriff is ordered to cause to come here on the quindene of St. Martin, unless John of Metingham previously etc., twelve etc. and who have no affinity etc. with the aforesaid prioress, to make recognition what right etc. and what etc. and meanwhile to take that land into the lord king's hand so that neither etc. and that of the issues etc. and that he make known to the chief lords mediate and immediate etc. that they be then here etc.

Afterwards on the Monday[1] next after the Annunciation of the Blessed Mary in the thirtieth year of the reign of the king who now is, at the Stone Cross[2] outside the walls of London before Ralph of Hengham with W. of Broke knight as his associate the parties came by their attorneys. And the sheriff caused the chief lords of the fee etc. mediate and immediate to know etc. And likewise the jurors came who said upon their oath that the aforesaid twenty acres of land are held of the aforesaid prioress, and that the ancestors of her the said Joan from a time whereof there is no memory held the aforesaid land of the aforesaid prioress and her predecessors by the service of twenty pence a year [who] were seised of the [rent] as of the right of their church until eighteen years and more ago when the aforesaid Adam and Joan allowed the aforesaid land to lie untilled and refused to pay the aforesaid service; and that within that time the prioress could not find sufficient distress in the same land etc. and that the aforesaid prioress was suing in the court of the lord king not in preconcerted fraud, but to deraign her right by statute etc. on the ground that there was a cessation from doing the aforesaid service for a period of two years before the purchase of the writ etc. Therefore it is awarded that the aforesaid prioress recover her seisin thereof and that Adam and Joan be in mercy etc.

12. GULDEFORD *v.* SELYDE.

One [Maud] brought her *cui ante diuorcium* against [Christine the widow of John of Selyde].

Hengham. Whereas she brings this writ against us we tell you that [John of Selyde] was seised of these tenements and devised[3] them to this same [Christine] against whom this writ is brought [with remainder] to [John Cokyn and Sybil his wife] and the heirs of [Sybil], and we have

[1] 26 March 1302.

[2] Near the Church of St. Mary le Strand.

[3] It appears from the Record that the tenements were in the borough of Shaftesbury, where there was a customary right to devise.

forsqe fraunctenement joynt etc. sanz les queux nous ne pooms ceux tenementz mener en jugement; et prioms eide de eux.

Willem et Robert vindrent en court et demanderent jugement de bref par la resoun qe le bref fut porté vers Margery *tantum*, qe n'est forsqe tenant de fraunctenement joynt etc.

Pass. Quei estes vous qe demaundez ceo et coment estes vous venuz ceinz, ou de gre ou par cours de ley etc.?

Ing. Par cours de ley et par somons.

Ber. Vous demandez jugement de bref avant qe vous joynez en respons et avant qe vous seiez partie au play; et a ceo ne poiez avenir; mès joynez vous a celui qe vous ad prié en eide et pus demaundez ceo qe vous veietz qe soit a demaunder.

Et pus se joyndrent et demaunderent jugement *ut prius*.

Ber. Vous estes prié en eyde et pur eider celi qe vous pria et sauver sa tenaunce et nent pur bref abatre, qe ceo serreit a pleder chose q'il ad pledé, et a ceo fustes nent vous prié en eide, einz a pleder ove lui ceo q'est a pleder. Eidez le donqe si vous voillez.

Pass. De melior condicioun ne poiez vous estre qe ne serroit celui qe vous pria en eyde, q'il vous ad prié de pleder ove ly, mès il ne serroit mie resceu a cel excepcion a bref abatre, *ergo* ne vous. (Et fut ousté de cel excepcion par agarde.)

Ing. La ou il porte ceste bref etc., nous vous dioms qe son auncestre qi heir il est nous enfeffa etc. et par ceste chartre. Et si nous fussoms enpledé etc. Jugement s'il put accioun avoir.

Pass. Si nous preissom nostre title de la seisine nostre auncestre bien deissez, mès nous avoms pris nostre title de nostre seisine demene. Jugement.

Ing. Conissez si ceo soit le fet vostre auncestre ou noun adeprimes etc.

The Record of the Case.

De Banco Rolls, 4 Edw. II., Trinity (No. 187), r. 93, Dorsetshire.

Matillis que fuit uxor Uiuiani de Guldeford' alias scilicet a die Pasche in tres septimanas anno regis nunc tercio peciit uersus Cristinam que fuit uxor Iohannis Selyde de Shaston unum messuagium cum pertinenciis in

frank tenement[1] only, jointly[2] etc. and without them we cannot bring these tenements into judgment. We pray aid of them.

[John and Sybil] came into court and asked judgment of the writ, for the reason that it was brought against [Christine] only and [she] is tenant of the frank tenement only jointly etc.

Passeley. Who are you who ask this, and how have you come here? Of your own will or by legal process etc.?

Hengham. By legal process, and by summons.

Bereford C.J. You ask judgment of the writ before you have joined in answering it; and before you are a party to the plea. You cannot arrive at that; but do you join yourself to [her] who has prayed you in aid, and then ask what you think it is for you to ask.

Then they joined themselves and asked judgment (as before).

Bereford C.J. You are prayed in aid, and to aid [her] who has prayed you, and to save [her] tenancy and not to abate the writ; for that might be to plead a matter which [she] has pleaded, and you were not prayed in aid for that, but to plead together with [her] what is to be pleaded. Aid [her] then if you will.

Passeley. In a better position you cannot be than [she] would be in who has prayed you in aid, for [she] has prayed you to plead together with [her]; but [she] would not be received to make this exception to abate the writ, and therefore you should not be received for this. (And *Hengham* was ousted from this exception by award of the court.)

Hengham. Whereas she brings this writ etc. we tell you that her ancestor whose heir [she] is enfeoffed us etc. and by this charter; and if we were impleaded etc. Judgment if [she] can have an action.

Passeley. If we took our title from the seisin of our ancestor, you would be right; but we have taken our title from our own seisin. We ask judgment.

Hengham. Acknowledge whether this is the deed of your ancestor, or not, first of all etc.[3]

Translation of the Record.

For the reference, see opposite.

Maud the widow of Vivian of Guldeford heretofore to wit three weeks after Easter 3 Edw. II. demanded against Christine the widow of John Selyde of Shaftesbury one messuage with the appurtenances in Shaftesbury

[1] At this period the word 'frank tenement' was in constant use to denote a tenancy for life as opposed to a tenancy in fee or in tail.

[2] This is not in accordance with the Record. The defendant made no claim to hold jointly until John and Sybil joined in answering when they alleged that the tenements were devised to Christine and Sybil and the heirs of Sybil.

[3] The report is incomplete. The Record, however, shows that the demandant denied that it was the deed of her father.

The Record of the Case—*continued.*

Shaston ut ius et hereditatem suam et in quod eadem Cristina non habet ingressum nisi per Iohannem Selyde cui predictus Uiuianus quondam uir ipsius Matillidis illud dimisit cui ante diuorcium inter eos celebratum contradicere non potuit etc. Et unde eadem Matillis dixit quod ipsa fuit seisita[1] de predicto messuagio cum pertinenciis in dominico suo ut de feodo et iure tempore pacis tempore domini E. regis patris domini regis nunc capiendo inde explecia ad ualenciam etc. et in quod etc. Et inde produxit sectam etc.

Et Cristina per attornatum suum tunc uenit et dixit quod predictum messuagium aliquo tempore fuit in seisina predicti Iohannis Selyde qui quidem Iohannes secundum consuetudinem uille Shaston in ultima uoluntate sua legauit predictum messuagium prefate Cristine habendum et tenendum tota uita ipsius Cristine et quod post decessum ipsius Cristine predictum messuagium remaneret quibusdam Iohanni Cokyn et Sibille uxori eius et heredibus de corpore ipsius Sibille procreatis etc. Unde dixit quod ipsa tenuit predictum messuagium ad terminum uite sue et cuius reuersio ad ipsos Iohannem et Sibillam spectat etc. Et peciit auxilium de ipsis Iohanne et Sibilla etc.

Et modo, scilicet, a die sancte Trinitatis in xv dies ueniunt tam predicta Matillis per Henricum de Eblesburne attornatum suum quam predicta Cristina per Iohannem de Bradelegh attornatum suum et similiter predicti Iohannes Cokyn et Sibilla in propriis personis suis per summonicionem etc. et se iungunt predicte Cristine in respondendo etc. Et tam ipsa Cristina quam predicti Iohannes et Sibilla dicunt quod predictus Iohannes Selyde in ultima uoluntate sua in testamento suo legauit ipsis Cristine et Sibille predictum messuagium cum pertinenciis tenendum ipsis Cristine et Sibille et heredibus de corpore ipsius Sibille legitime procreatis etc. Et proferunt testamentum predicti Iohannis quod hoc testatur etc. Et dicunt quod ipsi modo tenent predictum messuagium per formam testamenti predicti etc.[2] Et dicunt quod predicta Matillis nichil iuris clamare potest in predictis tenementis quia dicunt quod quidam Stephanus Bray pater predicte Matillidis cuius heres ipsa est per cartam suam dedit concessit et confirmauit predicto Iohanni Selyde quandam domum cum suis pertinenciis in predicta uilla tenendam eidem Iohanni et heredibus suis et assignatis etc. Et obligauit se et heredes suos ad warantizandum etc. predicto Iohanni et heredibus suis et suis assignatis contra omnes gentes etc. Et proferunt hic predictam cartam que predicta donum concessionem et warranciam testatur in forma predicta. Et dicunt quod predicta domus que continetur in predicta carta est predictum messuagium nunc uersus eos petitum etc. Unde dicunt quod si ipsi ab aliquo alio inde implacitarentur predicta Matillis ut heres predicti Stephani teneretur eis predictum messuagium warrantizare iuxta formam predicte carte ut assignatis predicti Iohannis Selide. Vnde petunt iudicium.

Et Matillis dicit quod ipsa uirtute predicte carte ab accione precludi non debet in hac parte etc. quia dicit quod predicta carta non est factum predicti

[1] The word *fuit* is here repeated in the MS.
[2] The word *cras* is here written in the margin of the roll.

Translation of the Record—*continued.*

as her right and inheritance, and into which the same Christine has not entry save by John Selyde to whom the aforesaid Vivian sometime the husband of her the said Maud demised it, whom she before the divorce celebrated between them could not gainsay etc. And whereupon the same Maud said that she was seised of the aforesaid messuage with the appurtenances in her demesne as of fee and of right in time of peace in the time of king Edward I. taking thereof the profits to the value etc.; and into which etc. And thereof she brings suit etc.

And Christine by her attorney then came and said that the aforesaid messuage sometime was in the seisin of the aforesaid John Selyde who according to the custom of the town of Shaftesbury devised in his last will the aforesaid messuage to the said Christine to have and to hold all the life of her the said Christine and [so] that after the decease of her the said Christine the aforesaid messuage should remain to one John Cokyn and Sybil his wife and the heirs of the body of her the said Sybil begotten etc. Wherefore she said that she held the aforesaid messuage for the term of her life and that the reversion thereof belongs to them the said John and Sybil etc. And she prayed aid of them the said John and Sybil etc.

And now, to wit, on the quindene of the Holy Trinity come as well the aforesaid Maud by Henry of Eblesburn her attorney as the aforesaid Christine by John of Bradelegh her attorney and likewise the aforesaid John Cokyn and Sybil in their own persons on the summons etc. and they join themselves to the aforesaid Christine in answering etc. And as well she the said Christine as the aforesaid John and Sybil say that the aforesaid John Selyde in his last will and testament devised to them the said Christine and Sybil the aforesaid messuage with the appurtenances to hold to them the said Christine and Sybil, and the heirs of the body of her the said Sybil lawfully begotten etc. And they proffer the testament of the aforesaid John which witnesses this etc. And they say that they now hold the aforesaid messuage by the form of the testament aforesaid. And they say that the aforesaid Maud can claim no right in the aforesaid tenements, because they say that one Stephen Bray father of the aforesaid Maud whose heiress she is, by his charter gave granted and confirmed to the aforesaid John Selyde a certain house with its appurtenances in the aforesaid vill to hold to the same John and his heirs and assigns etc.; and he bound himself and his heirs to warrant etc. to the aforesaid John and his heirs and his assigns against all men etc. And they proffer here the aforesaid charter which witnesses the aforesaid gift grant and warranty in the form aforesaid. And they say that the aforesaid house which is contained in the aforesaid charter is the aforesaid messuage now demanded against them etc. Whereupon they say, that if they be impleaded by any other person thereof, the aforesaid Maud, as the heiress of the aforesaid Stephen, would be bound to warrant to them the aforesaid messuage according to the form of the aforesaid charter as the assigns of the aforesaid John Selyde. Whereupon they ask judgment.

And Maud says that she by virtue of the aforesaid charter ought not to be precluded from an action in this behalf etc. because she says that the

The Record of the Case—*continued.*

Stephani etc. Et hoc petit quod inquiratur per patriam et per testes nominatos etc. Et predicti Iohannes et alii similiter. Ideo preceptum est uicecomiti quod uenire faciat hic in crastino sancti Martini Walterum de Hache, Petrum Ruffe, Thomam Tuprest, Iohannem Rycheman, Laurencium Burieys, Willelmum Selewod, Petrum filium Gode, Henricum le Somenur et Michaelem le Seler testes in predicta carta nominatos etc. et preter illos xij etc. per quos etc. et qui nec etc. ad recognoscendum etc. quia tam etc.

Et sciendum quod predicta carta remanet in custodia Iohannis Bacun clerici regis ad custodiendum etc. Et super hoc predicti Iohannes et Sibilla ponunt loco suo Willelmum de Trobrugg' uersus predictam Matillidem de predicto placito etc.

13. GASCELYN *v.* RYUERE.

I.[1]

Adhuc de Rogero Gaselyn *ut supra*[2] in principio termini Hillarii anno quarto. Vide casum.

Casus istius placiti. Richard Turbervyle frere Agneys fust seisi de ceux tenementz, les dona a Agneys et a W. de Arcubus son baroun et a les heirs de lour corps engendrez etc. A. et W. furent seisi par my ceo doun, et[3] pus après Richard Turbervile reprist estat a terme de vie de W. de Arcubus ; puys après Richard de Turbervile aliena ceux tenementz en fee a Johan de Rivers et[4] obligea ses heirs etc. W. devie. Agneys ensemblement ove son baroun porterunt le *cui in uita.*

Alio die Scrop defendit tort et force etc. et le dreit Agneys, et conust bien qe Richard de Turbervile fust seisi de ceux tenementz et hors de sa seisine enfeffa cestuy Johan de Rivers a lui[5] et a ses heirs et obligea luy et ses heirs a la garrantie et Agneys est heir Richard du sanke, et si nous fuissoms empledé d'un estrange,[6] ele nous serroit lié[7] a la garrantie. Jugement.

West. Nostre accioun est fondu sus une taille et issi le demaundoms nous a aver et tenir a nous et a nos heirs de nostre corps engendrez et de W. nostre primer baron et saunz ceo qe vous ne puisses moustrer qe assez nous soit descendu par my Richard etc. Jugement.

Scrop. Est ceo le fait vostre auncestre ou noun ?

[1] From *B* (fol. 62 v°) collated with *G* and *Y* (fol. 100 r°). The heading is in the same words in *B* and *G*. The opening paragraph is differently stated in *Y*. See p. 54 below. [2] See vol. vi. p. 49. [3] *Om.* et *G*. [4] *Om.* et *B*. [5] *Om.* a lui *G*. [6] *Subs.* de autre *G*, par autre *Y*. [7] tenu *G*, *Y*.

Translation of the Record—*continued.*

aforesaid charter is not the deed of the aforesaid Stephen etc., and she asks that this may be inquired by the country and by the witnesses named etc. And the aforesaid John and the others likewise. Therefore the sheriff is ordered to cause to come here on the morrow of St. Martin, Walter of Hache, Peter Ruffe, Thomas Tuprest, John Rycheman, Lawrence Burieys, William Selewode, Peter the son of Gode, Henry le Somenur and Michael le Seler, the witnesses named in the aforesaid charter etc. and besides these men twelve etc. by whom etc. and who neither etc. to make recognition etc. because as well etc.

And be it known that the aforesaid charter remains in the keeping of John Bacun the king's clerk to be kept etc. And upon this the aforesaid John and Sybil put in their place William of Trobrugg against the aforesaid Maud on the aforesaid plea etc.

13. GASCELYN *v.* RIVERE.

I.

More of [Bogo] Gascelyn (as above) at the beginning of Hilary term in the fourth year. See the case.[1]

The case. Richard Turbervile brother of [Amice] was seised of these tenements, and gave them to [Amice] and William de l'Arche her husband and the heirs of their bodies begotten etc. Amice and William were seised by this gift; and afterwards Richard Turbervile retook an estate for a term of life from William de l'Arche. Afterwards Richard de Turbervile alienated these tenements in fee to John de la Rivere, and bound himself and his heirs to warranty. William died. [Amice] with her [second] husband brought the *cui in uita.*

On another day *Scrope* denied tort and force etc. and the right of [Amice] and acknowledged right well that Richard de Turbervile was seised of these tenements; and he out of his seisin enfeoffed this John de la Rivere to him and his heirs, and bound himself and his heirs to the warranty, and [Amice] is the heir of the blood of Richard, and if we were impleaded by a stranger she would be bound to the warranty. We ask judgment.

Westcote. Our action is founded upon a limitation in tail; and so we demand the tenements to have and to hold to us and the heirs of our body and the body of William our first husband begotten, unless you are able to show that assets have descended to us through Richard etc. We ask judgment.

Scrope. Is this the deed of your ancestor or not?

[1] See vol. vi. p. 49.

Westcote. Est ceo fee taillé auxi com nous dioms ou noun ?

Herle. Ou fait soit mys en courte en[1] barre il covent qe la partie graunte le fait ou dedie, par quei il covent etc.

West. Si le fiz Agneys portast son bref de forme de doun, ceo fait ne serroit mye barre a luy saunz ceo qe heritage luy fust descendu etc. par Richard etc.

(*Alio die* uenere partes predicte ;) et *Berr.* dixit :—Quei respoignes vous al fait vostre auncestre q'il vous mette en barre ? Est ceo le fait vostre auncestre ?

West. Nous ne poms dedire, mès nous dioms qe nous countoms de nostre seisine demeygne par my une fee taillé fait a nous et a nostre primer baron W. et as heirs de nous etc. saunz ceo qe vous puissez moustrer qe riens nous soit descendu par my celuy auncestre. Jugement etc.

Scrop. Si Agneys soit barré, les heirs W. et Agneys serrount barrez, qe serroit encountre la volenté le donour etc.

Alio die repetit et dixit *ut supra.*

West. Rienz ne nous est descendu, prest etc.

Toud. Si nous fuissoms empledé de ceste terre, q'est en demaunde et nous vouchassoms ceste Agneys par ceo fait, ele nous convensist[2] garrantir com heir du sank.

West. Jeo vous respound. Si vous[3] vouchassez, ceo serroit bon respounse a moy a dire,[4] garraunter ne vous dey, par la reison qe j'ay accioun a demaunder meisme les tenementz etc.

Ber. a *Toud.* Il vous dient q'un R. dona ceux tenementz *ut supra* etc., par quel doun ele fut seisi, et dit qe se[5] fait de sa seisine demeygne en tiel taillé demaunde[6] ne luy doit grever etc. a ceste accioun user.

Herle. De commune dreit le fait l'auncestre barreit le heir et ore vous n'avez nul statut qe restreynt cele ley. A ceo qe vous dites q'il counta[7] de sa seisine demene etc.,[8] si le pere disseisist le fiz, après la morte le pere, il serra barré par le fait son pere del assise de novele disseisine et de chesqun autre remedie.

Alio die Scrop. Vous veetz bien coment nous mettoms avant le fait lour auncestre en barre de lour accioun, a quei il ne respond nent. Jugement.[9]

Westecot. Rien nous est descendu[10] par quei son fait a nous ne doit estre barre a demaunder solom la forme etc.

Toud. Si ele recoversist[11] sa demande a ore, nent contre esteant[12]

[1] pur *G, Y.* [2] covenesit *G*, convensit *Y.* [3] *Ins.* me *Y.* [4] *Ins.* qe *Y.* [5] ceo *G, Y.* [6] demaunder *G. Om.* demaunde *Y.* [7] counte *G.* [8] *Ins.* Com *G. Ins.* jeo vous respond *Y.* [9] *Ins.* e demaundoms jugement *Y.* [10] dit *B*, dec' *G*, descendu *Y.* [11] recovereit *G, Y.* [12] *For* nent contre esteant *subs.* aresteant *Y.*

Westcote. Is this fee tail as we say, or not ?

Herle. Where a deed is put before the court as a bar, the party must either grant the deed or deny it. Therefore you must etc.

Westcote. If the son of [Amice] brought his writ of formedon, this deed would not be a bar to him unless an inheritance had descended to him etc. through Richard etc.

On another day the parties aforesaid came and BEREFORD C.J. said: What answer do you make to the deed of your ancestor which he puts forward as a bar to you? Is it the deed of your ancestor ?

Westcote. We cannot deny it; but we tell you that we count on our own seisin by a fee tail limited to us, and W. our first husband and the heirs of our bodies etc. without your being able to show that assets have descended to us through this ancestor. Judgment etc.

Scrope. If [Amice] were barred, the heirs of William and [Amice] would be barred, which would be against the will of the donor etc.

On another day [*Scrope*] rehearsed the plea and said (as above).

Westcote. Assets have not descended to us. Ready etc.

Toudeby. If we were impleaded of this land which is in demand, and we vouched this [Amice] by this deed, she would have to warrant to us as heiress of the blood.

Westcote. I will answer you. If you vouched me it would be a good answer for me to say :—I ought not to warrant to you because I have an action to demand these same tenements etc.

BEREFORD C.J. (*to Toudeby*). They tell you that one Richard gave these tenements (as above), and by this gift she was seised, and she says that this deed, as regards her demand on her own seisin with this limitation, ought not to harm her nor to stand in the way of her using this action.[1]

Herle. At common law the deed of the ancestor should bar the heir; and now you have no statute which limits the common law. As regards what you say, that [she] counted of her own seisin etc. I answer that if the father disseised the son, the son after the death of the father would be barred by the deed of his father from the assize of novel disseisin and from every other remedy.

(On another day.) *Scrope.* You see how we put forward the deed of their ancestor in bar of their action, and to this they make no answer. We ask judgment.

Westcote. Nothing has descended to us. Therefore his deed ought not to bar us from demanding according to the form of the gift etc.

Toudeby. If she were to recover her demand now notwithstanding

[1] This seems to be the purport of the observations of the Chief Justice; but the text of the report is corrupt here.

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le fait son auncestre et pus après heritage luy fust descendu coment avendroms nous a nostre terre ?

Denom. Par procees qe doné est par estatut.

Toud. Jammes etc. qar vous n'estes mye en cas d'estatut etc.

Berr. Il chargent mout ceo q'ele mesme fut seisi par la forme etc.

Herle. A la commune ley ele est barré etc. et statut ne la eide de[1] rien, qare cestuy bref est a la commune ley etc. coment qe[2] bref prent sa nessaunce par my la taillé.

West. Le doun se fit a nous et a nos heirs de nostre primer baron engendrez et vous dioms qe le fait Richard ne put rien esteyndre nostre accioun, ne l'accioun nos heirs etc.

Scrop. Femme en dowere par sa chartre put barrer ses heirs etc.

Alio die Herle. A la commune ley ele fust barré com heir du sanke et ele n'est pas eidé par statut. Jugement.

Westecot. Et nous jugement desicom nous clamoms ceux tenementz en forme taillé, et rien n'avoms par descente de Richard etc. si son fait a nous soit barre etc.

Et dies datus est partibus a die Pasche in iij septimanas saluis sibi racionibus. Et postea moriebatur tenens.

Et sequitur materia consimilis anno xj in uno breue de forma donacionis.[3]

II.[4]

Cui in uita. Ou ele se fist title de franc mariage, e le tenant le voleit barrer par le fait son frerre ou ele dit q'ele n'avoit rens par descente.

Bokes de Gascelin e Amice sa femme porterent lour *cui in uita* vers Jon de la Reyver e demaunderunt certeyn tenemenz les quex un Willem dona a un Henri en franc mariage ove mesme cele Amice e en les quex mesme cely Jon n'ad entre si noun par Piers de Brettoun a qy Henri le premer baroun mesme cele Amice[5] lessa a qy ele en sa vie etc.

Scrop. Sire, la ou il dient qe n'avioms entré si noun par P. de B. il dient verité ; mès nous vous dioms qe mesme cely P. frere Amice, qy heir ele est, de ceux tenemenz nous enfeffa e obliga ly e ces heirs

[1] *Om.* de *G.* [2] *Ins.* le *G.* [3] *Om.* Et postea . . . donacionis *Y.* [4] From *R* (Hilary, 4 Edw. II) collated with *D* and *T* (Mich., 5 Edw. II). The headnote is from *D.* [5] *Ins.* ceo *T.*

the deed of her ancestor and afterwards an inheritance descended to her, how should we come to our land ?

Denham. By the process which is given by the statute.[1]

Toudeby. Never etc. ; for you are not in the case of the statute etc.

Bereford C.J. They attach much importance to this, that she herself was seised by the form etc.

Herle. At the common law she is barred etc. and the statute does not help her at all, for this writ is at the common law etc. although it may have its origin in the limitation [in tail].

Westcote. The gift was made to us and our heirs by our first husband begotten and we tell you that the deed of Richard cannot extinguish our action nor the action of our heirs etc.

Scrope. A woman holding in dower can by her charter bar her heirs etc.

(On another day.) *Herle.* At the common law she would be barred as heir of the blood, and she is not aided by statute. We ask judgment.

Westcote. And inasmuch as we claim these tenements according to the form of a gift in tail, and we have nothing by descent from Richard, we ask judgment whether his deed is a bar to us etc.

A day was given to the parties three weeks after Easter, saving to them their arguments. And afterwards the tenant died.

And similar matter follows in the eleventh year on a writ of formedon.[2]

II.

Cui in uita. The demandant based her title on frank marriage. The tenant wished to bar her by the deed of her brother. She said that she had not assets by descent.

Bogo Gascelyn and Amice his wife brought their *cui in uita* against John de la Rivere and demanded certain tenements which [Richard] gave to one [William] in frank marriage with this same Amice, and into which this same John has not entry save by [Richard de Turbervile] to whom [William] the first husband of this same Amice leased them, whom she in his lifetime could not gainsay.

Scrope. Sir, where they say that we had not entry save by [Richard] they say the truth ; but we tell you that this same Richard the brother of Amice, whose heiress she is, enfeoffed us of those tenements, and

[1] De Donis Conditionalibus.

[2] *See* Maynard's edition of the *Year Books of Edw. II.*, 11 Edw. II., Michaelmas, p. 324 ; Trinity, p. 348. These two reports refer to the same case.

a la garantie.[1] Jugement si encountre son fet[2] rien pussez demaunder.

Westcot. Nous demaundoms ceux tenementz etc. e avoms fet nostre title par my une forme de doun taillé a nostre premer baroun[3]; e demaundoms jugement si par nul fet de auncestre si vous ne poet mostrer qe nous avoms par descente etc. a demaunder etc. de nostre seisine demene nous pusset reboter.

Herle. Seoms a un si ceo seit le fet vostre auncestre.

West. Si le heir fut a demaundèr en le *descendere* e le tenaunt ust alleggé une fine a qy le auncestre le demaundant fut partie, ja ne convendreit granter la fyn ne dedire pur ceo q'ele n'est pas barre; nent plus en ceo cas.

Scrop. Nent semblable, qe vous estes icy a un bref a la commune lei.

West. prist le fet e enparla; e revint e le granta e dit qe rienz ly fut descenduz par my cely, par qy fet il le voleit barrer, e demaunda jugement etc.

Scrop. Ceo respouns, a dire[4] rien ly est descenduz, si est doné par statut ove le heir est a demaunder de la seisine sa miere etc. les tenemenz qe son piere aliena vivant sa miere ou en temps quant il les tynt par la curteysye d'Engleterre, mès ore sumes nous icy a la commune ley ove nous vous bioms reboter[5] par le fet vostre frere. Jugement.

Toud. Ceo est commun ley; la ou jeo vous puisse lyer a la garauntie par bref de garauntie de chartre ou de vocher a garant si nous fussoms enpledé de un estraunge, par mesme la reson, jeo vous barrai etc. Mès jeo vous lierrai a la garauntie e *per consequens* jeo vous reboterai.

Scrop.[6] Si femme qe tent en dowere aliene en fee e oblige ly e ces heirs a la garantie e cely a qy la revercioun apent porte son bref après la mort la femme s'il seit heir du sanke il serra barré[7] par my la garantie, *sic ex parte ista.*

Pass. Si nous demaundasoms de la seisine nostre auncestre descendaunt a nous,[8] icy[9] qe nostre title fut de commune ley, vous deisset bien, mès ore demaundoms nous par la forme de un purchas e de un doun taillé en nostre persone, ensi qe nul alienacioun qe le auncestre fet n'est mye prejudiciel[10] sanz ceo qe heritage ly seit descendu de part

[1] *Ins.* et si nous fussoms [en]pledé de un estraunge ele serreit com heir lié a la garauntie *T.* [2] *For* son fet *subs.* le fait son auncestre *D, T.* [3] *Ins.* et a nous *T.* [4] *Ins.* qe *T.* [5] *Ins.* d'accion *D.* [6] *Ins.* ad idem *D, T.* [7] *Om.* il serra barré. *Ins.* la femme qe aliena, le tenaunt lui barra *D, T.* [8] *Ins.* ou de nostre seisine demene *D, T.* [9] issint *D, T.* [10] *For* en nostre . . . prejudiciel, *subs.* par my l'alienacioun vostre primer baroun ou solom la nature de la tenauntz, poer d'auncestre est issi restreint qe un put aliener issi qe celle alienacioun seit estable *T.* et par my alienacion de nostre primer baroun solom la nature de la tenance est issint [r]estreint q'il ne poet aliener, e s'il aliene cele alienacion serroit desafeblée, *D.*

bound himself and his heirs to warranty. Judgment if you can against his deed demand anything.

Westcote. We demand these tenements etc. and have based our title on the form of a gift limited to our first husband and to us[1]; and we ask judgment whether by any deed of an ancestor unless you can show that we have assets by descent etc. you can rebut us from demanding etc. on our own seisin.

Herle. Let us be agreed whether this is the deed of your ancestor.

Westcote. If the heir were to demand in the 'descender' and the tenant had alleged a fine to which the ancestor of the demandant was a party, it would not be necessary to grant the fine nor to deny it, because it is not a bar; no more is the deed a bar in this case.

Scrope. That is not the same case; for you are here on a writ at the common law.

Westcote took the deed and imparled; and he returned and granted it, and said that nothing had descended to him from him by whose deed they wished to bar him. He asked judgment etc.

Scrope. That answer, that is to say, 'nothing has descended,' is given by statute[2] where the heir is demanding on his mother's seisin etc. the tenements which his father alienated in the lifetime of his mother or at the time when he held them by the courtesy of England; but now we are here at the common law, and we wish to rebut you by the deed of your brother. We ask judgment.

Toudeby. This is the common law: Where I could bind you to the warranty by a writ of warranty of charter, or by voucher to warranty if [I] were impleaded by a stranger, there on the same principle I could bar you etc. But here I might bind you to warranty and consequently I may rebut you.

Scrope. If a woman who holds in dower alienates in fee and binds herself and her heirs to warranty, and he to whom the reversion belongs brings his writ after the death of the wife, if he is heir of the blood, he will be barred by the warranty; and similarly in this case.

Passeley. If we were to demand on the seisin of our ancestor with descent to us, so that our title was at the common law, what you say would be right; but now we are demanding on the form of a purchase and of a gift limited to us personally, so that no alienation which the ancestor may make is prejudicial, unless an inheritance has descended

[1] See note 3 opposite.

[2] Statute of Gloucester, c. 3.

cely qe aliena ; e del oure qe vous ne poet dire qe nous eoms ascune chose[1] par descente de nostre frere, demaundoms jugement.

Scrop, justice, (*ad idem*). Ele demaunde ceux tenemenz e fet son title par une forme taillé etc. ensi qe si ele fut ore barré son issue qe demaundereit par my la forme[2] serreit barré qe serreit encontre ley s'il n'ust par descente par cely par qy fet il est voché ou lié.[3]

Scrop. Sire, joe cray qe noun, qar a purchas q'est doné a la commune ley si gist respounse a la commune ley[4]; mès c'est un bref doné a la commune ley ; e *per consequens* mesme[5] respounse, q'est doné par commune ley, quant a cesti bref, si est asset bon. Mès autre serreit en le *descendere* q'est a la ley[6] especial etc.

Herle. Si le piere disseisie le fitz e aliene e oblige ly e ces heirs a garantie, après la mort le piere le fitz est barré, auxi par de sa.

Scrope, justice. N'est mie mervaile, q'il put aver recoverer s'il ust usé sa accioun vivant son piere ; issi qe sa lachesse e sa negligence demene ly turnera en prejudice. Mès en ceo cas il covent a force qe la femme attendist la mort soun baroun; dount grant duresse enseueroit[7] si ele fut barré depus qe nule defaute n'est en ly trové.

Toud. Si ele recovere sa seisine[8] nent countreesteaunt l'estat[9] son auncestre e pus[10] heritage la fut descendu etc. coment avendreit[11] il de recoverer a la value etc. nent par proces qe statut vous doune pur ceo qe nous ne sumes mie en cas de statut, eynz tot a la commune ley. Jugement.

Berr. Il fet a charge de ceo qe ele demaunde de tiel estat com ele mesme avoit e[12] seisi fut ; quele seisine fut par my la forme de doun issi qe si ele recovere se dorra fee taillé.

Herle. A la commune ley ele fut barré e par statut ele ne put estre eydé, pur ceo q'ele n'est mye en le cas.

Scrop, justice. Gardez vos jours a treys simeines de Pasche.

III.[13]

Bokes Gasselyn e Amiz sa femme porterent lour *cui in uita* vers Iohan de la Ryvere e demanderent certeinz tenemenz en N. les diz

[1] avauntage *T.* [2] *Om.* taillé etc. . . . forme *D.* [3] *Om.* s'il . . . lié *D.* *For* il . . . lié *subs.* le tenant le vodereit reboter *T.* [4] *Om.* si gist . . . ley *T.* [5] nostre *T.* [6] *Om.* ley *R.* [7] serroit *D.* *Ins.* qe *T.* [8] demaunde *T.* [9] le fait *T.* [10] *Om.* ele recovere . . . pus *D.* [11] avendroms *T.* [12] *Om.* avoit e *D, T.* [13] This is the opening paragraph of the report of this case in *Y.* The rest of the report is in almost the same words as the report in *B* and *G* (see p. 50 above).

to [us] from him who alienated ; and since you cannot say that we have anything by descent from our [brother,] we ask judgment.

Scrope J. (in agreement). She demands these tenements, and makes her title by the form of a gift in tail etc., so that if she were now barred, her issue who would demand by the form of the gift would be barred ; and that would be against the law, if the issue had nothing by descent from him by whose deed he is vouched or bound.

Scrope. Sir, I think not, for on a purchase [of a writ] which is given at common law, a reply lies at the common law. But this is a writ given at the common law ; consequently our reply which is given at common law is, as regards this writ, good enough ; but it would be otherwise in the descender which is at a special law etc.

Herle. If the father disseises the son and alienates and binds himself and his heirs to warranty after the death of the father, the son is barred, so here.

Scrope J. That is not wonderful ; for he could have recovered, if he had used his action in the lifetime of his father ; so that his laches and his own negligence will turn to his disadvantage. But in this case it is absolutely necessary that the wife await the death of her husband. Therefore a great hardship would ensue if she were barred seeing that no default has been found in her.

Toudeby. If she recovered her seisin notwithstanding the deed of her ancestor, and afterwards an inheritance descended to her, how would the tenant arrive at recovering lands to the value etc. ? not by the process which the statute gives you, for we are not in a case of the statute but we are entirely at the common law. We ask judgment.

Bereford C.J. He attaches importance to the fact that she demands the estate which she herself had, and of which she was seised ; and this seisin was by the form of the gift, so that if she recover, she will be given fee tail.

Herle. At the common law she was barred, and she cannot be aided by statute ; because she is not in the case of the statute.

Scrope J. Await your day, three weeks after Easter.

III.

Bogo Gasselyn and Amice his wife brought their *cui in uita* against John de la Rivere and demanded certain tenements in N. which Bogo

Bokes e Amiz clamerent com le dreit Amis a tenir a Amiz e les heirs de corps Amiz e Johan de C. sun primer baron engendrez du doun W. le Blund e en les queux le dit Johan n'ad entré si noun par Richard Turbelvylle a quei le dit Johan jadis baroun la dite Amice se lessa a quei ele en sa vie ne poet contredire etc.

* * * * * *

14. BAYNARD *v.* PEUEREL.[1]

I.

Entré sur la novele disseisin, ou le bref fut chalengé par resoun del entré ; ou le tenaunt entra par successioun de heritage.

Un homme porta soun bref d'entré foundu sur la novele disseisine devers J. Peverel et A. sa femme. Et fust le bref tiel :—Precipe J. de P. et A. uxori eius etc. reddant unum messuagium etc. in quod Alicia non habet ingressum etc.

Hing. Jugement du bref etc. q'il[2] dit, ' en le quel A. n'ad entré si noun pus la disseisine,' en supposaunt qe J. P. trova sa femme seisi ; mès[3] nous vous dioms q'il[4] entra a un temps e a une foithe etc.[5]

Ber. Donqe grantez vous l'entré etc. ? [6]

Pass. Sire, nous vous dioms qe[7] ceo mies ensemblement ove altres tenementz descendi a Alice vostre femme e a ij altres com a iij filles et un heir et ceo mies alloté en la purpartie Alice ; serreit ceo donqe[8] bon bref :—' in quod predicti J. et A. non habent ingressum etc.' ?[9] noun serreit etc. ; qe s'il deit[10] ensi, ceo serroit faux, qe vous n'estes mye entré par successioun, auxi com A. vostre femme ; ne par nule manere de purchas etc. ; et en[11] autre manere ne purrez entrer sinoun par successioun ou par purchas. Jugement.

Ber.[12] Pur ceo qe c'est le heritage A., et vous nul autre estat ne poez clamer mès com baroun, par quei nous agardoms le bref bon etc. Et d'autrepart s'il eust trové sa femme seisi, il eust dit et dirroit en le bref *ut supra,* ' in quod predicta A. etc.'

[1] From *B*, collated with *G* and *M*. The last twelve words of the headnote are in a later hand. [2] *For* jugement . . . q'il *subs.* La ou il porte ceste bref vers J. P. et A. sa femme et pus *M*. [3] et *M*. [4] *Ins.* ne trova pas sa femme seisi einz *M*. [5] *Ins.* jugement du bref *M*. [6] An explanatory paragraph is here introduced in *M*. It is printed on p. 56. [7] The first six words are omitted in *M*, and from this point the speech is attributed to the Chief Justice in that MS. [8] *For* serreit . . . donqe *subs.* Quidez vous donqes qe ceo serreit *M*. [9] *Ins.* si moy eide dieu *M*. [10] dit *G*, deist *M*. [11] *Om.* en *M*. [12] *Om.* Jugement. *Ber. M*. See note 7 above.

and Amice claimed as the right of Amice to hold to Amice and the heirs of the body of Amice and [William] her first husband begotten of the gift of [Richard de Turbervile] and into which the said John has not entry save by Richard de Turbervile to whom the said [William] lately husband of the said Amice demised them, whom she in his life-time could not gainsay etc.

* * * * * *

14. BAYNARD *v.* PEVEREL.

I.

Entry *sur disseisin*. The writ was challenged on account of the entry, the tenant having entered by hereditary succession.

A man brought his writ of entry founded on the *novel disseisin* against John Peverel and [Joan] his wife. And the writ was as follows: Command John Peverel and [Joan] his wife etc. that they render one messuage etc. into which [Joan] has not entry save etc.

Hengham. We ask judgment of the writ, for it says 'into which [Joan] has not entry save after the disseisin,' thus supposing that John Peverel found his wife seised. But we tell you that they entered at one and the same time etc.

Bereford C.J. Then you grant the entry etc.?

Passeley. Sir, we tell you that this messuage together with other tenements descended to [Joan] your wife and to two others as to three daughters and one heir; and this messuage was allotted as the share of [Joan]. Would this then be a good writ: 'into which the aforesaid John and [Joan] have not entry etc.'? It would not be; for if the writ said so, it would be untrue, for you have not entered by succession so much as [Joan] your wife; nor have you entered by any kind of purchase etc. And in no other way can you enter save by succession or purchase etc. We ask judgment.

Bereford C.J. Because it is the inheritance of [Joan] and you [John] can claim no other estate save as husband, we award the writ good etc. And besides if he had found the tenant's wife seised he would have said and should say in the writ (as above) 'into which the aforesaid [Joan] etc.'

II.[1]

Et fut le cas tiel :—après qi mort Johan Peverel avoit esposé Alice ; si descendi cele terre ensemblement ove autres terres a mesme cesti Alice et as autres deux soers com a iij filles e un heir, et la purpartie fut fet entre eux issint qe en allouaunce des autres terres fut cele mees assigné a mesme cele Alice en sa purpartie taunt com ele fut coverte de mesme cesti Johan Peverel et issint entrerent Johan et Alice.

* * * * * *

[2] *Nota* qe celuy qe fust prié en eide ne fut pas resceu de exceptioner al bref, ne d'abatre le bref, pur ceo q'il est prié etc. de saver la tenaunce et ne mye de bref abatre, qar si *sic*, ceo serroit a repleder ceo q'est pledé. Et de meillour condicioun ne serra il quant al bref abatre qe ne serra celuy qe luy pria en eide :—*per* Willelmum de Ber' etc., fallit tamen in casu etc.

The Record of the Case.

De Banco Rolls, 4 Edw. II., Trinity (No. 187), r. 93d., Norfolk.

Robertus filius Roberti Baynard petit uersus Iohannem Peuerel et Iohannam uxorem eius triginta et octo acras terre et unam acram prati cum pertinenciis in Magna Hauboys et uersus Thomam de Framelingham et Agnetem uxorem eius triginta et octo acras terre et unam acram prati cum pertinenciis in eadem uilla ut ius et hereditatem suam et in quas eadem Iohanna et Agnes non habent ingressum nisi per Bartholomeum de Redham qui illas eis dimisit qui inde iniuste et sine iudicio disseisiuit Robertum Baynard patrem predicti Roberti cuius heres ipse est post primam etc. Et unde idem Robertus dicit quod predictus Robertus pater etc. fuit seisitus de predictis terris ut de feodo et iure tempore pacis tempore domini E. patris domini regis nunc capiendo inde explecia ad ualenciam etc. et de ipso Roberto descendit feodum etc. isti Roberto qui nunc petit ut filio et heredi et in quas etc. Et inde producit sectam etc.

Et Iohannes et alii per attornatum suum ueniunt. Et predicti Iohannes et Iohanna et similiter predicti Thomas et Agnes quo ad tenementa uersus eos petita singillatim dicunt quod predicta tenementa simul cum aliis tenementis dudum fuerunt in seisina cuiusdam Bartholomei de Redham qui inde obiit seisitus in dominico suo ut de feodo etc. post cuius mortem hereditas ipsius Bartholomei descendit ipsis Iohanne et Agneti et cuidam Margarete uxori Willelmi de Neuton' ut filiabus et heredibus etc. inter quas hereditas illa partita fuit etc. ita quod predicta tenementa nunc uersus eos singillatim petita assignata fuerunt ipsis Iohanne et Agneti in propartem suam etc. et quedam alia tenementa assignata fuerunt predicte Margarete in propartem etc. unde predicti Iohannes et Iohanna dicunt quod

[1] This is the explanatory paragraph mentioned on p. 55, note 6.

[2] This note is missing in *M*. It appears to relate to case 12 (p. 47 above) which is reported in *M*, but is not found in *B* and *G*.

II.

And the case was as follows:—after the death [of the ancestor] John Peverel married [Joan]. This land together with other lands descended to this same [Joan] and to two other sisters as three daughters and one heir; and a division was made between them, so that this messuage in allowance of other lands was assigned to this same [Joan] as her share whilst she was covert by this same John Peverel, and so John and [Joan] entered.

* * * * * *

[1]Note.—He who was prayed in aid was not received to make an exception to the writ, nor to abate the writ; because he was prayed in aid to save the tenancy and not to abate the writ, for if he were received so to do, it would be to replead what has been pleaded. And he should not be in a better position for abating the writ than he who prayed him in aid—by Bereford C.J. Fallit tamen in casu etc.

Translation of the Record.

For the reference, see opposite.

Robert the son of Robert Baynard demands against John Peverel and Joan his wife thirty-eight acres of land and one acre of meadow with the appurtenances in Great Hautboys and against Thomas of Framelingham and Agnes his wife thirty-eight acres of land and one acre of meadow with the appurtenances in the same vill as his right and inheritance and into which the same Joan and Agnes have not entry save by Bartholomew of Redham who demised the tenements to them and who unlawfully and without judgment disseised thereof Robert Baynard the father of the aforesaid Robert whose heir he is, after the first etc. And whereupon the same Robert says that the aforesaid Robert his father etc. was seised of the aforesaid lands as of fee and of right in time of peace, in the time of king Edward I, taking thereof the profits to the value etc. and from him the said Robert descended the fee etc. to this Robert who now demands as son and heir, and into which etc. And thereof he brings suit etc.

And John and the others come by their attorney. And the aforesaid John and Joan and likewise the aforesaid Thomas and Agnes as to the tenements demanded against them respectively, say that the aforesaid tenements together with other tenements were sometime in the seisin of one Bartholomew of Redham who died seised thereof in his demesne as of fee etc. after whose death the inheritance of him the said Bartholomew descended to them the said Joan and Agnes and one Margaret the wife of William of Neuton as daughters and heiresses etc. among whom that inheritance was divided etc. so that the aforesaid tenements now demanded against them respectively were assigned to them the said Joan and Agnes as their share etc. and certain other tenements were assigned to the aforesaid Margaret as her share etc.

[1] See note opposite.

The Record of the Case—*continued.*

ipsi non possunt tenementa uersus eos petita deducere in iudicium sine predictis Thoma[1] Agnete Willelmo et Margareta participibus etc. et similiter predicti Thomas et Agnes quo ad tenementa uersus eos petita dicunt quod ipsi non possunt tenementa illa sine predictis Iohanne et Iohanna Willelmo et Margareta participibus etc. deducere in iudicium etc. Et petunt auxilium de predictis participibus suis singillatim etc. Et Robertus non potest hoc dedicere. Ideo ipsi summoneantur quod sint hic in crastino sancti Martini ad respondendum simul etc.

15. CROUPER *v.* ABSOLON.[2]

Forfeture de mariage.

Un Adam porta bref de forfeture de mariage vers W. et dit q'il avoit la garde de corps et des terres mesme cestui W. de lees le Dean et le chapitre de Hereford par quel lees il fut seisi, par quei etc. Et pur ceo qe le pere mesme cestui W. tent del Dean et le chapitre par service de chivaler et mesme cesti A. lui tendi mariage avenaunt[3] sanz desparagement il le refusa et s'abati en les tenementz etc.

Scrop. Sire, quant al abatement nous vous dioms qe nous sumes de plein age et le Dean et le chapitre nous livererent noz terres et issint entrames nous en noz terres de plein age et nent par abatement. Et quant al mariage nous dioms qe Willem nostre pere tent de un R. un mese etc. par service de chivaler par priorité de feffement. Jugement etc.

Denom. Dont demaundoms jugement de pus qe vous ne deditez pas qe vostre auncestre ne tynt de Dean etc. par services de chivaler qi estat nous avoms, et nous seisi de corps et de terre et vous tendoms marier,[4] et vous la refusastes. Jugement.

Scrop. Seoms en un de la priorité et demorroms jugement.

Denom. De pus qe vous ne poiez dedire qe nous ne sumes seisi de la garde et vous tendimes mariage et nul autre mist debate, jugement etc.

Stanton. Il est ore de plein age, et ore est a lui a moustrer qe son mariage appent nent a vous.

Scrop. Si jeo moy eusse marié quant vous me tendistes mariage quel response averoy jeo vers le chef seignour de qi mon auncestre tynt par priorité, de pus qe a moy est a conustre ma tenaunce demene.

Au dreyn pristerunt issue sur la priorité. Et sic ad patriam.

[1] MS. Thome. [2] From *M.* [3] 'convenable' is the usual adjective in this context. [4] An error for 'mariage.'

Translation of the Record—*continued.*

Whereupon the aforesaid John and Joan say that they cannot bring the tenements demanded against them into judgment without the aforesaid Thomas Agnes William and Margaret their parceners etc. And likewise the aforesaid Thomas and Agnes as to the tenements demanded against them say that they cannot bring those tenements into judgment etc. without the aforesaid John and Joan and William and Margaret their parceners etc. And they pray aid of their aforesaid parceners respectively etc. And Robert cannot deny this. Therefore let them be summoned to be here on the morrow of St. Martin to answer together etc.

15. CROUPER *v.* ABSOLON.

Forfeiture of marriage.

One [Richard] brought a writ of forfeiture of marriage against [Thomas] and said that he had the wardship of the body and lands of this same [Thomas] of the lease of the Dean and Chapter of Hereford, and by this lease he was seised, wherefore etc. And because the father of this same [Thomas] held of the Dean and Chapter by knight's service, and this same [Richard] tendered to him an appropriate marriage without disparagement, and this Thomas refused the marriage and intruded upon the tenements etc.

Scrope. Sir, as to the intrusion we tell you that we are of full age, and that the Dean and Chapter delivered to us our lands, and so we entered on them when of full age and not by intrusion. And as regards the marriage we say that William our father held a messuage etc. of one [John of Bradfield] by knight's service with priority of feoffment [to that of the Dean and Chapter]. We ask judgment etc.

Denham. Then we ask judgment, since you do not deny that your ancestor held by knight's service of the Dean etc. whose estate we have, and that we are seised of the body and land and that we tendered to you a marriage, and you refused it. We ask judgment.

Scrope. Let us be at one on the priority, and we will await judgment.

Denham. Since you cannot deny that we are seised of the wardship, and tendered you a marriage, and no other person raised a question thereon, we ask judgment etc.

Stanton J. He is now of full age, and now it is for him to show that his marriage does not belong to you.

Scrope. If I had married when you tendered me marriage, what reply should I have had to the chief lord of whom my ancestor held with priority of feoffment, seeing that it is for me to acknowledge my own tenancy?

Finally, they joined issue on the priority. And so to the country.

The Record of the Case.

De Banco Rolls, 4 Edw. II., Trinity (No. 189), r. 102d., Herefordshire.

Thomas filius Willelmi Absolon in misericordia pro pluribus defaltis etc.

Idem Thomas summonitus fuit ad respondendum Ricardo de Croupes de placito quare (cum custodia ipsius Thome et terre sue usque ad legitimam etatem suam una cum maritagio suo ad prefatum Ricardum pertineret racione dimissionis quam decanus et capitulum ecclesie sancti Ethelberti Herefordensis, de quibus prefatus Willelmus terram suam tenuit per seruicium militare inde fecerunt[1] prefato Ricardo, idemque Ricardus in plena et pacifica seisina eiusdem custodie diu extiterit et prefato Thome dum infra etatem et in custodia eiusdem Ricardi fuit competens maritagium absque disparagacione iuxta formam statuti in huiusmodi casu prouisi frequenter obtulisset) idem Thomas maritagium illud renuens[2] in terris dicte custodie durante eadem custodia se intrusit et contra uoluntatem eiusdem Ricardi non satisfacto ei de maritagio predicto se maritari fecit et alia enormia ei intulit ad graue dampnum ipsius Ricardi quadraginta librarum etc. Et unde idem Ricardus per Willelmum de Frome attornatum suum dicit quod (cum custodia ipsius Thome et terre sue usque ad legitimam etatem suam una cum maritagio suo ad prefatum Ricardum pertineat racione dimissionis quam predicti decanus et capitulum—de quibus prefatus Willelmus tenuit unum messuagium et unam carucatam terre cum pertinenciis in Ouereglynton' per seruicium quarte partis feodi unius militis, scilicet per homagium et fidelitatem et faciendi ad scutagium domini regis quadraginta solidorum cum acciderit decem solidos et ad plus plus et ad minus minus de quibus homagio fidelitate et seruicio predicti decanus et capitulum fuerunt seisiti per manus ipsius Willelmi et obiit in homagio et seruicio ipsorum decani et capituli—inde fecerunt[1] predicto Ricardo ac idem Ricardus in plena et pacifica seisina eiusdem custodie diu extiterit et prefato Thome dum infra etatem et in custodia eiusdem Ricardi fuit competens maritagium absque disparagacione iuxta formam statuti etc. frequenter optulisset scilicet die Iouis proxima post festum sancti Michaelis anno regni domini Edwardi regis patris domini regis nunc tricesimo quinto apud Whytinton' in comitatu Gloucestrie Aliciam filiam eiusdem Ricardi in presencia Philippi Medefen, Iohannis le Childesmon et aliorum) idem Thomas maritagium illud renuens in terris dicte custodie durante eadem custodia se intrusit et contra uoluntatem eiusdem Ricardi non satisfacto ei de maritagio predicto se maritauit et alia enormia etc. Vnde dicit quod deterioratus est et dampnum habet ad ualenciam etc. Et inde producit sectam etc.

Et Thomas per Reginaldum de Orleton' attornatum suum uenit et defendit uim et iniuriam quando etc. et bene defendit quod ipse dum infra etatem

[1] MS. *fecit*. [2] MS. *rennuens*.

Translation of the Record.

For the reference, see opposite.

Thomas the son of William Absolon in mercy for several defaults etc.

The same Thomas was summoned to answer Richard of Croupes on a plea wherefore (seeing that the wardship of him the said Thomas and his land until his lawful age together with his marriage belonged to the aforesaid Richard by reason of the demise which the Dean and Chapter of the church of St. Ethelbert of Hereford, of whom the aforesaid William held his land by knight's service, made thereof to the aforesaid Richard, and that the same Richard for long had been in full and peaceful seisin of the same wardship, and to the aforesaid Thomas whilst within age and in the wardship of the same Richard had frequently offered a certain fitting marriage without disparagement according to the form of the statute[1] in such case provided) the same Thomas refusing that marriage had during the same wardship intruded upon the lands of the said wardship and against the will of the same Richard, no satisfaction having been made to him concerning the marriage aforesaid, caused himself to be married and other enormities to him did to the grievous damage of him the said Richard of forty pounds etc. And whereupon the same Richard by William of Frome his attorney says that (seeing that the wardship of him the said Thomas and his land together with his marriage belongs to the aforesaid Richard until his lawful age by reason of the demise which the aforesaid Dean and Chapter—of whom the aforesaid William held one messuage and one carucate of land with the appurtenances in Over Egleton[2] by the service of a fourth part of a knight's fee, to wit, by homage fealty and payment for a scutage of our lord the king of forty shillings when it should fall due, ten shillings and for more more and for less less, of which homage fealty and service the aforesaid Dean and Chapter were seised by the hands of him the said William, who died in the homage and service of the same Dean and Chapter—thereof made to the aforesaid Richard, and [seeing that] the same Richard had been for long in full and peaceful seisin of the same wardship and to the aforesaid Thomas whilst within age and in the wardship of the same Richard had frequently offered a fitting marriage without disparagement according to the form of the statute etc., to wit, on the Thursday[3] next after the feast of St. Michael 35 Edw. I. at Whittington in the county of Gloucester Alice the daughter of the same Richard in the presence of Philip Medefen, John le Childesmon and others), he the same Thomas refusing that marriage intruded upon the lands of the said wardship during the same wardship and against the will of the same Richard, no satisfaction having been made to him concerning the marriage aforesaid, caused himself to be married and other enormities did etc. Whereupon he says that he is injured and has damage to the value etc. And thereof he brings suit etc.

And Thomas by Reynold of Orleton his attorney comes and denies tort and force when etc. and well he denies that he whilst within age and in the

[1] Statute of Merton, c. 6.

[2] Formerly in the parish of Bishops Frome, but now in that of Stretton Grandison.

[3] This must be a wrong date. The thirty-fifth year of Edward I. began on 20 November 1308 and ended with his death on 7 July 1307.

The Record of the Case—*continued.*

fuit et in custodia etc. non intrusit se in predictis tenementis set cum ipse ad plenam etatem peruenit in eisdem tenementis intrauit absque aliqua iniuria eidem Ricardo inde facienda etc. Dicit eciam quod cum predictus Ricardus asserat prefatum Willelmum patrem ipsius Thome cuius heres ipse est tenuisse predicta tenementa de predictis decano et capitulo per predictum seruicium militare idem Willelmus et omnes antecessores sui predicta tenementa tenentes prius tenuerunt unum messuagium et unam uirgatam terre cum pertinenciis in predicta uilla de Ouereglynton' de Iohanne de Bradefeld et antecessoribus suis per seruicium militare, scilicet, per homagium et fidelitatem et seruicium faciendi ad scutagium domini regis quadraginta solidorum cum acciderit duodecim denarios et ad plus plus etc. quam[1] predicta messuagium et carucatam terre de predictis decano et capitulo et predecessoribus suis per idem seruicium militare. Et de hoc ponit se super patriam. Et Ricardus similiter.

Ideo preceptum est uicecomiti quod uenire faciat hic in crastino sancti Martini xij etc. per quos etc. et qui nec etc. ad recognoscendum etc. quia tam etc.

16. MONTFORT *v.* TREGOZ.[2]

Forme de doun en le *descendere.*

En un bref de forme de doun en le *descendere* ou la descente fu faite de R. e Peronelle a Willem come a fuitz, de Willem por ceo q'il murust sanz heir etc.[3] descendi[4] a Johan[5] q'ore demande[6] come a frerre, de Willem pur ceo q'il murust sanz heir etc. descendi a Johan q'ore demande come a frerre[7] e les queux après la morte R. e P. e W. fuitz e heir R. e P. e Willem frerre e heir Willem a Johan frerre[8] Willem descendre deivent.

Malm. Jugement du bref, par[9] la ou homme demande tenemenz par my la forme en le *descendere* il covent faire celui qi demande par my la forme privée a celui a qi la primer forme fu taillé, come a dire. 'Et les queux après la morte R. e P. e[10] Willem fuitz e heir R. e P. e Willem[11] frerre e heir Willem a Johan fuitz e heir R. e P. descendre deivent par my la forme.'

Scrop. Ceo ne serreit pas forme du bref, qar Willem e W. tyndrent estat l'un après l'autre e en ceo cas ne busoigne pas a faire le demandant privé si non a celui qe dereyn tendi estat. Et demandoms jugement.[12]

Et fut le bref agardé bon par *Bereford* etc.

[1] The word 'cras' is written in the margin of the roll opposite this word. [2] From *D* collated with *P* and *T*. [3] *Subs.* de soi *P*, *T*. [4] *Ins.* le droit *P*. [5] Willem *P*, *T*. [6] *Om.* q'ore demande *P*, *T*. [7] *Ins.* et heir *P*. [8] *Ins.* et heir *P*, *T*. [9] qe *P*. [10] a *D*, e *P*. [11] *Om.* e Willem *D*. [12] *Om.* Et . . . jugement *P*, *T*.

Translation of the Record—*continued.*

wardship etc. intruded upon the aforesaid tenements, but when he came to his full age he entered the same tenements without doing any tort in the matter to the same Richard etc. He says also that, whereas the aforesaid Richard asserts that the aforesaid William the father of him the said Thomas whose heir he is held the aforesaid tenements of the aforesaid Dean and Chapter by the aforesaid knight's service, the same William and all his ancestors holding the aforesaid tenements, held one messuage and one virgate of land with the appurtenances in the aforesaid vill of Over Egleton of John of Bradefeld and his ancestors by knight's service, to wit, by homage and fealty and the service of paying for the king's scutage of forty shillings when it falls due, twelve pence and for more more etc. before they held the aforesaid messuage and carucate of land of the aforesaid Dean and Chapter and their predecessors by the same knight's service; and of this he puts himself upon the country; and Richard likewise.

Therefore the sheriff is ordered to cause to come here on the morrow of St. Martin twelve etc. by whom etc., and who neither etc., to make recognition etc., because as well etc.

16. MONTFORT *v.* TREGOZ.

Formedon in the descender.

In a writ of formedon in the descender, the descent was made from Robert and Peronel to [Walter] as son [and heir]; from [Walter] because he died without an heir of his body the right descended to [William][1] as brother; from William because he died without an heir etc. the right descended to [Robert] who now demands, as brother and heir, which tenements after the death of Robert and Peronel and Walter the son and heir of Robert and Peronel and William the brother and heir of [Walter] to [Robert] the brother and heir of William ought to descend.

Malberthorpe. We ask judgment of the writ. Where a man demands tenements by the form of the gift in the descender, he must make him who demands by the form privy to him to whom the gift was first limited, thus: 'and which after the death of Robert and Peronel and [Walter] the son and heir of Robert and Peronel and [William] the brother and heir of [Walter] to [Robert] the son and heir of Robert and Peronel ought to descend by the form of the gift.'

Scrope. That should not be the form of this writ, for Walter and William each attained an estate one after the other, and in this case there is no need to make the demandant privy to any save him who last attained an estate. We ask judgment.

And the writ was awarded good by Bereford C.J.

[1] The words 'q'ore demande' in *D* are inserted in error.

The Record of the Case.

De Banco Rolls, 4 Edw. II., Trinity (No. 187), r. 88, Sussex.

Robertus de Monteforti clericus petit uersus Henricum Tregoz manerium de Bargham cum pertinenciis quod Walterus Donstanuile dedit Roberto de Monteforti et Petronille uxori eius et heredibus de corporibus ipsorum Roberti et Petronille exeuntibus et quod post mortem ipsorum Roberti et Petronille et Walteri filii et heredis eorundem Roberti et Petronille et Willelmi fratris et heredis predicti Walteri prefato Roberto fratri et heredi predicti Willelmi descendere debet per formam donacionis predicte etc.

Et Henricus per attornatum suum uenit. Et petit inde uisum. Habeat etc. Dies datus est eis hic in octabis sancti Martini etc. Et interim etc.

17. COLBY *v.* SPENSER.[1]

I.

Forme de doun ou le baron et sa femme alienerent avant statut après issue le dreit la femme.

Isabelle[2] dona certeinz tenementz a B. de Nevile et a les heirs de son corps engendrez; prist baron[3]; aveient issue W. q'ore porte cestuy bref.

Ing. Sire, nous vous dioms qe B.,[4] a qi les tenementz furent ensi donez, prist baron P. par noun, et ele et son baron alienerent devant statut après issue. Jugement.

Pass. Soiez avowé. (*sic fuit*)

Pass. Sire, la ou il dient qe luy et son baron alienerunt avant statut,[5] nous vous dioms qe le baron ne pout alienacioun faire en barre de la femme ne son issue de dreit[6] la femme sauntz fyn levé. Jugement si par cele alienacioun nous puisse d'accioun[7] barrer.

Ber. Il vous dit qe la femme aliena etc.

Cant.[8] Nous vous dioms qe la femme prist baroun et aliena avant statut après issue.

Pass.[9] Le baron ne poet estat faire ne la femme tanqe[10] ele est[11] coverte. Jugement.

Cant.[12] Sire, nous vous dioms qe son pere, qi heir il est, nous enfeffa de mesme ceux tenemenz par ceo fait qe cy est et obligea luy et ses heirs etc. Jugement si encountre le fait vostre auncestre accioun puissez aver.[13]

[1] From *B* collated with *G* and *M*. The report in *R* is badly damaged. [2] *Ins.* de Nevile *G*, *M*. [3] *Om.* prist baron *M*. [4] Beatrix *M*. [5] *Om.* avant statut *G*, *M*, *R*. [6] *Om.* dreit *M*. [7] *Om.* d'accioun *M*. [8] *Om. Cant. M*. [9] *Ber. B*. [10] taunt com *G*. [11] seit *M*. [12] *Ing. M*; *Cant. R*. [13] *Add* qe nous voloms averrer qe rien nous est descendu par my celi qi fet il mette avaunt etc. *M*.

Translation of the Record.

For the reference, see opposite.

Robert de Montfort clerk demands against Henry Tregoz the manor of Bargham with the appurtenances which Walter Donstanvile gave to Robert de Montfort and Peronel his wife and the heirs of the bodies of them the said Robert and Peronel issuing, and which after the death of them the said Robert and Peronel and Walter the son and heir of the same Robert and Peronel and William the brother and heir of the aforesaid Walter to the aforesaid Robert the brother and heir of the aforesaid William ought to descend by the form of the aforesaid gift etc.

And Henry by his attorney comes, and asks view thereof. Let him have it. A day is given to them here on the octave of St. Martin, and meanwhile etc.

17. COLBY *v.* SPENSER.

I.

Formedon. The husband and wife alienated before the statute *De Donis* and after issue born lands held in right of the wife.

[Elizabeth] gave certain tenements to Beatrice de Neville and the heirs of her body begotten ; she took a husband ; they had issue [John] who now brings this writ.

Ingham. Sir, we tell you that Beatrice to whom these tenements were so given took a husband Philip by name, and she and her husband alienated before the statute after issue born. We ask judgment.

Passeley. Be avowed. (He was.)

Passeley. Sir, whereas they say that she and her husband alienated before the statute, we tell you that the husband could not alienate in bar of the wife or of her issue tenements of the right of the wife without a fine levied. We ask judgment whether by this alienation he can bar us of our action.

Bereford C.J. He tells you that the woman alienated etc.

Cambridge. We tell you that the woman took a husband and alienated before the statute after issue born.

Passeley. The husband could not make an estate, nor the wife whilst she was covert. We ask judgment.

Cambridge. Sir, we tell you that the demandant's father, whose heir he is, enfeoffed us of these same tenements by this deed, which is here, and bound himself and his heirs to warranty. We ask judgment whether against the deed of your ancestor you can have an action.

Pass. A ceo n'avendrez vous mye, qe vous avez doné respounse[1] sur le quel vous estes avowé. Jugement si a autre respounse puissez resortir.[2]

Ing. Ceo qe nous ore dioms est en eidant et affermant ceo qe nous deismes avant, par quei conisez si ceo soit le fait vostre auncestre ou noun.

Ber. Est ceo le fait etc.[3] ?

(Et fut chacé par la court a conustre ou dedire le fait.)

Pass.[4] Nous ne poms dedire le fait ; mès nous vous dioms qe rienz nous est descendu par my celuy qi fait etc. Prest.

Et alii econtra.

II.[5]

Un A. porta le forme de doun en le *descendere* vers un F. et demaunda certeinz tenementz et dit qe A. dona ceus tenementz a E. et M. sa femme[6] et lez heirs de lour ij corps engendrez.

Roston. Sire, il ne poount en ceuz tenementz rien demaunder qe nous vous dioms qe M. avoit un baroun P. par noun lez queux après issue avaunt statut alienerunt. Et demaundoms jugement.

Denom. Volez ceo pur respounse ?

Royston fut avowé.

Denom. Ore demaundoms jugement, del houre q'il allege alienacion par le baroun et sa femme la quele duraunt la coverture est le fet le baroun qe ne fut pas partie al doun, si par tel alienacion devoms estre barré.

Ber. Il vous dit qe lez tenementz avaunt statut furent alienez après issue. Conisez si lez tenementz furent alienez en la manere ou noun.

Denom. J'ay graunte regard a statut qe dit qe avant statut la ou tenementz furent donez a une femme et a soun baroun en fee taillé après issue il poeyent aliener ; ore est ceo respounse de alleger qe le baroun ne fut pas partie al doun, par quei nous ne devoms estre barré.

Ber. Tele chose put il alleger qe tele alienacioun ly serra bare cum par voye de fyn.

Denom. Die ceo la.

Ruston. Sire, nous vous dioms qe l'auncestre mesme ceti nous enfeffa de mesme ceux tenementz par sa chartre et obligea ly etc. ;

[1] *Om.* respounse *G.* [2] avenir *M.* [3] *Om.* etc. *Ins.* de vostre auncestre ou ne my *G. Sim. M, R.* [4] In place of this speech *M* has—Et pus conust et dit qe rien ne lui fut descendu par my celi qi fet etc., prest etc. [5] From *P.* [6] See note opposite.

Passeley. You will not come to that, for you have given your answer, and upon it you have been avowed. We ask judgment if you can resort to another answer.

Ingham. That which we say now is in support and affirmation of what we said before. Therefore acknowledge whether this is the deed of your ancestor or not.

Bereford C.J. Is this the deed etc. ?

(And *Passeley* was driven by the court to acknowledge or deny the deed.)

Passeley. We cannot deny the deed ; but we tell you that nothing has descended to us through him whose deed it is. Ready etc.

And the others to the contrary.

II.

One [John] brought the formedon in the descender against one [Hugh] and demanded certain tenements ; and he said that [Elizabeth] gave these tenements to [Philip] and [Beatrice][1] his wife and the heirs of their two bodies begotten.

Roston. Sir, they cannot demand anything in these tenements, for we tell you that [Beatrice] had a husband Philip by name, and they alienated after issue and before the statute. We ask judgment.

Denham. Will you have that for your answer ?

Roston was avowed.

Denham. Now we ask judgment. Since he alleges an alienation by the husband and his wife, and this alienation during the coverture is the deed of the husband, who was not a party to the gift, we ask judgment whether we ought to be barred by such an alienation.

Bereford C.J. He tells you that the tenements were alienated before the statute, and after issue born. Acknowledge whether the tenements were alienated in this way or not.

Denham. I have a great regard for the statute, which says, that where before the statute tenements were given to a woman and her husband in fee tail, they could alienate after issue born. Now this answer is to allege that the husband was not a party to the gift and therefore we ought not to be barred.

Bereford C.J. The tenant can allege this alienation ; for it might be a bar to the demandant, as by way of fine.

Denham. Let him say so then.

Roston. Sir, we tell you that the ancestor of this same demandant enfeoffed us of these same tenements by his charter, and bound himself

[1] This is incorrect. The Record shows that the gift was made to Beatrice while she was sole.

e si nous fussoms enpledé de un estraunge il nous garrauntireit. Jugement.

Denom. A ceo ne deit il avenir, qe il ad doné un respounse qe trenche a nostre accioun, a quel respounse il est avowé. E demaundoms jugement si a ceo deit il estre resceu.

Ruston. Unqor dioms cum avaunt et pursiwimes cel response et vous dioms qe vostre auncestre nous enfeffa de mesme lez tenementz et par mi cel fet et obligea etc. et assez avez par descente.

Denom fut chacé par la court a respoundre a ceo ; et il dit qe rienz ly fut descendu, et de ceo fut il prest etc.

Et alii e contra.

The Record of the Case.

De Banco Rolls, 4 Edw. II., Trinity (No. 187), r. 68, Lincolnshire.

Iohannes filius Philippi de Colby petit uersus Hugonem le Spenser de Botheby sexdecim acras terre et terciam partem unius tofti cum pertinenciis in Roppesle que Elizabetha de Neuill' dedit Beatricie de Neuill' et heredibus de corpore eiusdem Beatricie exeuntibus et que post mortem predicte Beatricie prefato Iohanni filio Philippi filio et heredi predicte Beatricie descendere debent per formam donacionis predicte etc.

Et Hugo per attornatum suum uenit et defendit uim et iniuriam quando etc. et dicit quod predictus Iohannes nichil clamare potest in predictis tenementis etc.; dicit enim quod Philippus filius Willelmi de Colby, pater predicti Iohannis cuius heres ipse est, dedit eidem Hugoni tenementa predicta cum pertinenciis tenenda sibi et heredibus suis etc. et obligauit se et heredes suos ad warantum etc. Et profert tres cartas sub nomine ipsius Philippi que hoc testantur etc. unde dicit quod si ab alio[1] inde implacitaretur idem Iohannes ut heres ipsius Philippi per facta predicta teneretur ei tenementa illa warantizare etc. Et petit iudicium etc.

Et Iohannes dicit quod per hoc precludi non debet ad petenda predicta tenementa per formam donacionis predicte etc., dicit enim quod ipse nichil habet per descensum hereditarium de predicto patre suo etc. Et hoc paratus est uerificare etc. Et petit iudicium etc.

Et Hugo dicit quod predictus Iohannes habet terras et tenementa apud Roppesle in comitatu predicto ad sufficienciam et habuit uicesimo tercio die Octobris anno domini regis nunc quarto quando idem Iohannes breue suum inde impetrauit que ei descenderunt de predicto Philippo patre suo ut de feodo simplici etc. Et de hoc ponit se super patriam. Et Iohannes similiter etc. Ideo preceptum est uicecomiti quod uenire faciat hic in crastino sancti Martini xij etc. per quos etc. et qui nec etc. quia tam etc.

Et concessum est per iusticiarios quod Iohannes de Melton uel Willelmus Haweberk sequantur pro predicto Iohanne filio Philippi qui est infra etatem etc. in predicto placito etc.

[1] The word *fuisset* is here inserted in the MS.

etc.; and if we were impleaded by a stranger, he would warrant to us. We ask judgment.

Denham. He ought not to arrive at this; for he has given an answer which goes to the root of our action, and on that answer he has been avowed. We ask judgment whether he ought to be received to this.

Roston. Still we say as before, and we press this answer, and we tell you that your ancestor enfeoffed us of these same tenements by this deed, and bound himself etc.; and you have assets by descent.

Denham was driven by the court to answer this. He said that nothing had descended to him [etc.]; and of this he was ready etc.

The others to the contrary.

Translation of the Record.

For the reference, see opposite.

John the son of Philip of Colby demands against Hugh le Spenser of Botheby sixteen acres of land and a third part of a toft with the appurtenances in Ropsley which Elizabeth de Nevill gave to Beatrice de Nevill and the heirs of the body of the same Beatrice issuing, and which after the death of the aforesaid Beatrice to the aforesaid John the son of Philip the son and heir of the aforesaid Beatrice ought to descend by the form of the gift aforesaid etc.

And Hugh by his attorney comes and defends tort and force when etc. and says that the aforesaid John can claim nothing in the aforesaid tenements etc., for he says that Philip the son of William of Colby, father of the aforesaid John whose heir he is, gave the aforesaid tenements with the appurtenances to the same Hugh to hold to him and his heirs etc. and bound himself and his heirs to warranty. And he proffers three charters under the name of him the said Philip, which witness this etc. Whereupon he says that if he were impleaded thereof by another, the same John as the heir of him the said Philip by the deeds aforesaid would be bound to warrant those tenements to him. And he asks judgment etc.

And John says that by this he ought not to be precluded from demanding the aforesaid tenements by the form of the gift aforesaid, for he says that he has nothing by hereditary descent from his father etc. And this he is ready to aver. And he asks judgment etc.

And Hugh says that the aforesaid John has lands and tenements at Ropsley in the county aforesaid in sufficiency and had them on the 23rd day of Oct. 4 Edw. II., when the same John purchased his writ thereof and that these tenements descended to him from Philip his father as of fee simple etc. And of this he puts himself upon the country. And John likewise. Therefore the sheriff is ordered to cause to come here on the morrow of St. Martin twelve etc. by whom etc., and who neither etc. because as well etc.

And it is granted by the justices that John of Milton or William Haweberk may sue on behalf of the aforesaid John the son of Philip who is within age etc. in the aforesaid plea etc.

18. NORTHMIMMES *v.* CASTEL.

I.[1]

Forme de doun en le *descendere* ou le tenant fist defaute e un autre pria d'estre resceu a defendre son dreit.

Johan le fuitz Piers de Mormyng[2] porta bref de forme de doun en le *descendere* vers Sare qe fu la femme Henri de Chauncel e demanda certeyns tenemenz en Norton[3] etc. Sare fist defaute après defaute. Vynt un Roger e dit qe la reversion de ceux tenemenz fut a lui, issi qe Sare q'ore fait defaute n'ad qe franc tenement e pria d'estre resceu a defendre son dreit.

Scrop. Coment appent la reversion a vous ?

Byngh.[4] Nous vous dioms qe une fyne se leva entre H. e Roger mon uncle issi qe Roger conust a lui e il regranta[5] e rendist a Roger e a Margerie sa femme e a les heirs Roger issi qe pur ceo qe R. murust sanz heir etc. descendi le dreit a S. com a frere, de S. a R. com a fuitz q'ore prie estre resceu.

Scrop. Est Margerie en vie ou mort[6] ?

Byngh. Nous n'avoms qe faire de M. ; mès vous dioms qe le dreit de la reversion appent a nous, e prioms estre resceu.

Scrop. Ore demandoms nous jugement del hure qe M. q'est partie a ceste grante est en pleyne vie issi qe vivant M. ren a R. ne deit escheire, par quei demandoms jugement si vivant M. deit il estre resceu.

Ber. Il n'est[7] mester de ceo faire qe le fee e le dreit est a ly coment qe Sare fait defaute e M. ne vynt pas,[8] par quei il prie estre resceu a defendre son dreit[9] e la tenance Sare e l'estat M.

Scrop. Sire, nous vous dioms qe autrefoitz bref fu porté vers mesme cele Sare ou ele pria eyde de Roger qi heir cesti qe prie estre resceu se fit, e eide fu granté issi qe proces fut continué vers lui com vers prié en eide. R. fist defaute par quei fut agardé q'ele respoigne soule et si fut R. severé. E demandoms jugement del hure qe agardé fut[10] q'ele respoigne soule s'il qe[11] cleyme estat par my celui qi fust severé deive estre resceu.

Ber. Vous dites pas qe cesti q'ore prie estre resceu fust severé, mès son auncestre. Volez dire[12] autre chose ?

[1] From *D* collated with *P.* [2] North' *P.* [3] Stourtone *P.* [4] *Hingh. P.* [5] granta *P.* [6] morte *P.* [7] ad *P.* [8] point *P.* [9] *Om.* a defendre son dreit *P.* [10] agard se fit *P.* [11] *Om.* qe *D.* [12] *Om.* dire *D, P.*

18. NORTHMIMMES *v.* CASTEL.[1]

I.

Formedon in the descender where the tenant made default and another man prayed to be received to defend his right.

John the son of Peter [of Northmimmes] brought a writ of formedon in the descender against Sarah the widow of [Walter de Castel] and demanded certain tenements in Northmimmes etc. Sarah made default after default. There came one Roger and said that the reversion of these tenements belonged to him, and that Sarah who now makes default has frank tenement only and he prayed to be received to defend his right.

Scrope. How does the reversion belong to you ?

Bingham. We tell you that a fine levied between [Nicholas de Castel] and Roger my uncle so that [Nicholas] acknowledged the tenements to him and granted and rendered them to Roger and Margery his wife and the heirs of Roger, so that, because Roger died without an heir [of his body], the right descended to S. as brother, and from S. to Roger as son who now prays to be received.

Scrope. Is Margery alive or dead ?

Bingham. We have nothing to do with Margery ; but we tell you that the right of the reversion belongs to us, and we pray to be received.

Scrope. Now we ask judgment, on the ground that Margery who is a party to this grant is alive, so that in her lifetime nothing can fall to Roger. Therefore we ask judgment whether in the lifetime of Margery he ought to be received.

Bereford C.J. There is no need to do this, for the fee and the right are in him, although Sarah made default and Margery has not come. Therefore he prays to be received to defend his right and the tenancy of Sarah and the estate of Margery.

Scrope. Sir, we tell you that heretofore a writ was brought against this same Sarah, on which she prayed aid of Roger, whose heir he who prays to be received makes himself ; and aid was granted to her so that process was continued against him as against one prayed in aid. Roger made default and thereupon it was awarded that she answer alone ; and so Roger was severed. And we ask judgment, seeing that it was awarded that she answer alone, whether he who claims an estate through this Roger who was severed ought to be received.

Bereford C.J. You do not say that he who now prays to be received was severed, but that his ancestor was severed. Will you say anything else ?

[1] This is *Fitz.* Book iii. fol. 99, Resceit, No. 160.

E pur ceo etc. fust agardé q'il fust resceu.

Et por ceo qe la demande fut d'un mees e de terre e le *Cape* ne voleit nul mees e issi fut desacordant al original par quei fut agardé q'il suwist autre bref *scilicet* le '*Cape sicut alias*' e qe le proces fut amendé etc.

II.[1]

Prier estre resceu, ou dit fut q'il ne devoit etc., care la reversioun fut graunté a soun pere et a sa mere et a lez heirz soun pere; et sa mere fut en pleyne vie. Hoc non obstante il fut resceu.

Un bref fut porté vers un tenant a terme de vie[2] qi fit defaute après defaute. Survynt Roger Cosyn et dit qe le tenant n'avoit riens si noun a terme de vie et la reversion[3] a ly, et pria estre resceu.

Pass. Moustrez coment etc.

Herle. Un Robert graunta[4] la reversion de[5] mesme lez tenementz qe cely, qe ad fet defaute tent a terme de vye, et les queux après la mort A. a S. deyvent revertir remaynet[6] a Roger Cosyn et a un[7] Mabyll sa femme et a lez heirs Roger. Et Roger est mort, et nous sumes soun fiz et soun heir, a qi par le graunt avantdit etc. le dreit[7] demurt en nous. Et prioms etc.

Pass. Resceu ne devez etc., care avant cez hures un bref fut porté vers mesme cely qe ad fet defaute de eisdem tenementis ou il vint en curt et pria eyde de Roger Cosyn vostre pere,[8] le quel Roger fut somoné[9] et severé[10] com cely qe ne voleit mye soun dreit defendre. Jugement[11] si vous qe estez soun heir a nul dreit[12] defendre devez estre resceu.

Berr. Vostre respons lyereit si cesti Roger fut mesme cely qe fut severé, set non est[13] ita.

Pass. Uncore resceu ne devez estre, qe statut veot qe cely a qi[14] après la mort le tenant[15] la reversion appent seit resceu; mès vous mesme avez graunté la procheine demure a Mabille qe fut la femme Roger vostre pere, la quele M. est en vie et issy n'estez[16] pas en cas de statut. Jugement etc.

[1] From *C* collated with *Q*, *T*, and *Y* (fol. 99 r°). [2] *Om.* a terme de vie *T*, *Y*. [3] *For* n'avoit . . . reversion, *subs.* n'oust qe fraunc tenement e le dreit fust *Y*. *Sim. T*. [4] dona *Q*. [5] *Om.* la reversion de *Y*. [6] remeignent *Q*. [7] *Ins.* etc. *T*, *Y*. [8] *Ins.* per *Q*. [9] *Ins.* e puis essoiné e puis fit defaute *T*, *Y*. [10] *Ins.* par la court. Et demandoms jugement del houre qe Roger vostre pere qi heir etc. fust severé *T*, *Y*. [11] *Om.* Jugement *T*, *Y*. [12] *For* a nul dreit *subs.* en dreit de ces tenemenz *T*, *Y*. [13] *Om.* est *Q*. [14] *Om.* a qi *Q*. [15] *Ins.* a qi *Q*. [16] n'est *Q*.

And thereupon it was awarded that he be received.

And because the demand was of a messuage and land, and the *Cape* mentioned no messuage, and so was discordant with the original writ, it was awarded that the demandant sue another writ, that is to say, the *Cape sicut alias*, and that the process be amended etc.

II.

Prayer to be received; and it was said that the intervener ought not to be received, because the reversion was granted to his father and his mother and the heirs of his father, and his mother was still alive. Notwithstanding this he was received.

A writ was brought against a tenant for a term of life, who made default after default. There came one Roger Cosyn and said that the tenant had nothing save for a term of life, and that the reversion belonged to him. He prayed to be received.

Passeley. Show us how etc.

Herle. One [Nicholas] granted [that] the reversion of the same tenements which she who has made default holds for a term of life, and which after the death of one [Sarah] ought to revert to [Nicholas], should remain to Roger Cosyn and [Margery] his wife and the heirs of Roger. And this Roger is dead and we are his son and heir[1]; and by the grant aforesaid etc. the right remains in us. And we pray etc.

Passeley. You ought not to be received, for heretofore a writ was brought against her, who has now made default, concerning the same tenements, and [she] came into court and prayed aid of Roger Cosyn your father. And this Roger was summoned and he was afterwards essoined and afterwards made default,[2] and he was severed by the court. We ask judgment seeing that Roger whose heir you are was severed as one who would not defend his right whether you who are his heir ought to be received to defend any right.

Bereford C.J. Your answer would be in point, if this Roger were the same man as he who was severed; but he is not.

Passeley. Still you ought not to be received, for the statute[3] says let him to whom after the death of the tenant the reversion belongs be received. But you yourself have granted that the next interest remains to [Margery] who is the widow of Roger your father; and this Margery is alive; and so you are not in the case of the statute. We ask judgment etc.

[1] Roger the intervener is described in the Record as 'kinsman and heir,' and not as 'son and heir.' He is probably correctly described as 'nephew' in the first report.

[2] The translation here follows *Y*.

[3] Statute of Westminster II. 13 Edw. I, c. 3.

Herle. La negligence Mabille ne deit pas toller nostre defens et de pus qe la curt est ascerté qe le dreit a nous demurt, jugement.

Pass. Si vous fuissez resceu ceo serreit a sauver[1] la tenaunce en la persone cely qe ne veot pas mesme sauver.[2]

Berr. Le receite Roger sauve la tenaunce auxi bien al tenant com a Mabille coment qe l'un ne[3] l'eit deservy.[4]

(Et fut resceu par *Berr.*)

The Records of the Case.

I.

De Banco Rolls, 5 Edw. II., Michaelmas (No. 189), r. 16, 323d., Hertfordshire.

Iohannes filius Petri de Northmymmes optulit se quarto die uersus Sarram que fuit uxor Walteri de Castello de placito unius messuagii unius carucate terre quinque acrarum prati decem et octo acrarum bosci uigintî et sex solidatarum et octo denariatarum redditus cum pertinenciis in Northmymmes que Ranulphus de Northmymmes dedit Petro de Northmymmes et Iohanne uxori eius et heredibus de corporibus ipsorum Petri et Iohanne exeuntibus et que post mortem ipsorum Petri et Iohanne prefato Iohanni filio et heredi predictorum Petri et Iohanne descendere debent per formam donacionis predicte etc. Et unde idem Iohannes dicit quod predictus Ranulphus fuit seisitus de predictis tenementis et ea dedit Petro et Iohanne tenenda in forma predicta per quod donum predicti Petrus et Iohanna inde fuerunt seisiti tempore pacis tempore domini Edwardi regis patris domini regis nunc capiendo inde explecia ad ualenciam etc. et que etc. Et ipsa non uenit et alias fecit defaltam hic scilicet in crastino Purificacionis beate Marie proximo preterito post quam comparuit hic in curia et posuit se in iuratam patrie etc. ita quod tunc preceptum fuit uicecomiti quod caperet predicta tenementa in manum domini regis etc. et quod summoneret eam quod esset hic in octabis sancti Iohannis Baptiste proximo sequentibus auditura inde iudicium. Ad quem diem uicecomes nichil inde fecit. Ideo sicut prius preceptum fuit uicecomiti quod caperet predicta tenementa in manum domini regis etc. et quod summoneret eam quod esset hic ad hunc diem scilicet in octabis sancti Martini etc. auditura inde iudicium etc. Et ipsa non uenit. Et uicecomes modo mandat quod tenementa capta sunt in manum domini regis et quod summonuit eam etc. Et super hoc uenit quidam Rogerus Cosyn consanguineus et heres Rogeri Cosyn et dicit quod predicta Sarra tenet tenementa predicta ad terminum uite sue de hereditate ipsius Rogeri. Et petit quod defalta predicta ei non preiudicet in hac parte maxime cum ipse paratus est defendere ius suum etc.; et petit quod ad hoc admittatur etc. Et predictus Iohannes non potest hoc dedicere etc. Ideo predictus Rogerus admittatur etc.

[1] saluer *Q.* [2] *Ins.* la tenance *T, Y.* [3] *Q* ends here abruptly. [4] *For* l'un . . . deservy *subs.* l'un ne l'autre nel eyent deservy *T, Y.*

Herle. The negligence of [Margery] ought not to deprive us of our defence, and since the court is satisfied that the right remains in us, we ask judgment.

Passeley. If you were received, it would be to save the tenancy in the person of her who does not wish to save it herself.

Bereford C.J. The receipt of Roger saves the tenancy as well for the tenant as for [Margery], although one of them deserves it not.

(And he was received by Bereford C.J.)

Translation of the Records.

I.

For the reference, see opposite.

John the son of Peter of Northmimmes offered himself on the fourth day against Sarah the widow of Walter de Castel on a plea of one messuage, one ploughland, five acres of meadow, eighteen acres of wood, twenty-six shillings and eight pence a year of rent with the appurtenances in Northmimmes, which Ranulph of Northmimmes gave to Peter of Northmimmes and Joan his wife and the heirs of the bodies of them the said Peter and Joan issuing, and which after the death of them the said Peter and Joan to the aforesaid John the son and heir of the aforesaid Peter and Joan ought to descend by the form of the gift aforesaid etc. And whereupon the same John says that the aforesaid Ranulph was seised of the aforesaid tenements and gave them to Peter and Joan to hold in the form aforesaid, and by this gift the aforesaid Peter and Joan were seised thereof in time of peace in the time of the lord king Edward father of the lord king who now is, taking thereof the profits to the value etc., and which etc. And she comes not, and she heretofore made default here, to wit on the morrow of the Purification of the Blessed Mary last past, after she appeared here in court, and put herself upon a jury of the country, so that the sheriff was then ordered to take the aforesaid tenements into the hand of the lord king etc. and to summon her to be here on the octave of St. John the Baptist next following to hear judgment thereon etc. At that day the sheriff did nothing thereon. Therefore as before the sheriff was ordered to take the aforesaid tenements into the hand of the lord king etc. and that he summon her to be here at this day, to wit the octave of St. Martin etc. to hear judgment thereon etc. And she did not come. And the sheriff now sends word that the tenements have been taken into the hand of the lord king and that he has summoned her etc. And upon this comes one Roger Cosyn, kinsman and heir of Roger Cosyn, and says that the aforesaid Sarah holds the tenements aforesaid for the term of her life of the inheritance of him the said Roger. And he asks that the aforesaid default shall not be prejudicial to him, especially as he is ready to defend his right etc.; and he asks to be received etc. And the aforesaid John cannot deny this etc. Therefore let the aforesaid Roger be admitted etc.

The Records of the Case—*continued.*

Et Iohannes petit uersus predictum Rogerum predicta tenementa cum pertinenciis etc. unde dicit quod predictus Ranulphus fuit seisitus de predictis tenementis et ea dedit predictis Petro et Iohanne tenenda in forma predicta per quod donum predicti Petrus et Iohanna inde fuerunt seisiti tempore pacis tempore domini Edwardi regis patris domini regis nunc, capiendo inde explecia ad ualenciam etc. et que etc. Et inde producit sectam etc.

Et Rogerus defendit ius suum quando etc. et dicit quod accio ad petenda tenementa data sub condiccione etc. competit de huiusmodi tenementis etc. alienatis post statutum de donis condicionalibus edictum etc. Et dicit quod predictus Petrus post exitum ab ipsis Petro et Iohanna exeuntem alienauit predicta tenementa diu ante predictum statutum edictum etc. Et hoc paratus est uerificare etc. unde petit iudicium etc.

Et Iohannes dicit quod predictus Petrus alienauit predicta tenementa post predictum statutum edictum etc. Et hoc petit quod inquiratur per patriam. Et Rogerus similiter.

Ideo preceptum est uicecomiti quod uenire faciat hic a die Pasche in unum mensem xij etc. per quos etc. et qui nec etc. ad recognicionem etc. quia tam etc.

Postea a die sancti Michaelis in tres septimanas anno regni regis nunc sexto uenerunt partes predicte et similiter iuratores de consensu parcium electi qui dicunt super sacramentum suum quod predicta tenementa alienata fuerunt post statutum predictum. Ideo consideratum est quod predictus Iohannes recuperet inde seisinam suam uersus predictum Rogerum. Et idem Rogerus in misericordia etc.

II.

Feet of Fines, Case 28, File 48, No. 362.

Hec est finalis concordia facta in curia domini regis apud Eboracum in octabis sancti Iohannis Baptiste anno regni regis Edwardi filii regis Henrici uicecimo octauo coram Iohanne de Metyngham Willelmo de Bereford Elia de Bekyngham Petro Malorre Willelmo Howard Lamberto de Trikyngham iusticiariis et aliis domini regis fidelibus tunc ibi presentibus Inter Rogerum Cusyn et Margeriam uxorem eius querentes per Willelmum Tebaud positum loco suo ad lucrandum uel perdendum et Nicholaum de Castello deforciantem per Gregorium de Castello et Simonem de Hedersete positum loco suo ad lucrandum uel perdendum de decem et octo messuagiis tribus carucatis terre ducentis acris bosci tresdecim acris prati mille et sexcentis acris pasture et nouem marcatis redditus cum pertinenciis in Northmymes que tenementa cum pertinenciis Sarra que fuit uxor Walteri de Castello tenet ad terminum uite unde placitum conuencionis summonitum fuit inter eos in eadem curia, scilicet quod predictus Nicholaus recognouit predicta tenementa cum pertin-

Translation of the Records—*continued.*

And John demands against the aforesaid Roger the aforesaid tenements with the appurtenances etc.; whereupon he says that the aforesaid Ranulph was seised of the aforesaid tenements and gave them to the aforesaid Peter and Joan to hold in the form aforesaid, and by this gift the aforesaid Peter and Joan were seised thereof in time of peace in the time of the lord king Edward father of the lord king who now is, taking thereof the profits to the value etc., and which etc. and thereof he brings suit etc.

And Roger denies the demandant's right, when etc. and says that an action to demand the tenements given under condition etc. lies concerning such tenements etc., when alienated after the publication of the statute *de donis condicionalibus* etc.; and he says that the aforesaid Peter after issue issuing from them the said Peter and Joan alienated the aforesaid tenements long before the aforesaid statute was published. And this he is ready to aver etc. Whereupon he asks judgment etc.

And John says that the aforesaid Peter alienated the aforesaid tenements after the aforesaid statute was published etc. And he seeks that this may be inquired by the country etc. And Roger likewise.

Therefore the sheriff is ordered to cause to come here a month after Easter, twelve men etc., by whom etc., and who neither etc. to make recognition etc., because as well etc.

Afterwards three weeks after Easter in the sixth year of the king who now is, came the parties aforesaid, and likewise the jurors chosen by the consent of the parties, who say upon their oath that the aforesaid tenements were alienated after the statute aforesaid. Therefore it is awarded that the aforesaid John recover his seisin thereof against the aforesaid Roger. And let the same Roger be in mercy etc.

II.

For the reference, see opposite.

This is the final agreement made in the court of the lord king at York on the octave[1] of St. John the Baptist in the twenty-eighth year of the reign of king Edward the son of king Henry before John of Metingham, William of Bereford, Elias of Beckingham, Peter Malorre, William Howard, Lambert of Trikingham justices and other faithful men of the lord king then and there present. Between Roger Cusyn and Margery his wife plaintiffs by William Tebaud put in their place to gain or to lose and Nicholas de Castel deforciant by Gregory de Castel or Simon of Hedersete put in his place to gain or to lose, of eighteen messuages, three ploughlands, two hundred acres of wood, thirteen acres of meadow, one thousand six hundred acres of pasture, and nine marks a year of rent with the appurtenances in Northmymmes, which tenements with the appurtenances Sarah the widow of Walter de Castel holds for the term of her life, whereon a plea of covenant was summoned between them in the same court, that is to say, the aforesaid Nicholas acknowledged the aforesaid tenements with the appurtenances to be the

[1] 1 July 1300.

The Records of the Case—*continued.*

enciis esse ius ipsius Rogeri et concessit pro se et heredibus suis quod predicta tenementa cum pertinenciis que predicta Sarra tenuit ad terminum uite de hereditate ipsius Nicholai in predicta uilla die quo hec concordia facta fuit et que post decessum ipsius Sarre ad predictum Nicholaum et heredes suos debuerunt reuerti post decessum ipsius Sarre integre remaneant predictis Rogero et Margerie et heredibus ipsius Rogeri tenenda de capitalibus dominis feodi illius per seruicia que ad illa tenementa pertinent imperpetuum. Et hec concordia facta fuit presente predicta Sarra et eam concedente: et fecit eisdem Rogero et Margerie fidelitatem in eadem curia.

19. LE PESTUR *v.* RY.

I.[1]

Forme de doun ou le tenant myst avant chartre simple fet par l'auncestre le demaundant saunz sauver la reversioun a ly; a quei le demandant dit qe le tenant ne fut privé ne parti au fet; par quei . . .

Un Adam porta son bref de forme de doun en le *reuerti* devers B., et dit qe R. son pere dona ceux tenementz a un Johan et a les heirs de son corps issantz etc.[2]; pur ceo q'il devia[3] saunz heir etc. reverti.[4]

Herle. Quei avetz vous de la forme?

Rast. Prest etc.

Lauf. A ceo n'avendrez mye, qe veetz yci le fait vostre pere[5] qe tesmoigne[6] les tenementz estre[7] donez en fee simple al avantdit Jon. Jugement si encountre le fait vostre pere[8] al averement devetz avenir.

Raston. Il n'est pas privé a ceo fait, eynz est[9] estrange. Jugement s'il nous deyve[10] de cest averement tollir.

Malm. Assetz est il privé[11] q'il est tenaunt des tenementz, et a luy est a defendre sa tenaunce.

Rost. Il n'est pas celuy a qi le fait fut fet, ne son heir, n'yl ne moustre nul especiauté coment il est a ceux tenementz avenuz, par quei il se peot faire privé.[12] Jugement etc. qe s'il nous vusit voucher il ne serroit pas resceu etc.

Herle. Nous ne pledoms[13] pas a vous barrer par reson de garrantie einz fomes[14] pur vous barrer del averement; et c'est par le fait vostre auncestre[15] qi heir etc.

[1] From *B* collated with *G* and *M*. There are two reports in *M* on folios 39v° and 41r° respectively, and they are here distinguished by the letters M^1 and M^2. The headnote is from *G*; but the words from 'par l'auncestre' to the end are in a later hand. [2] *Ins.* et *G*, M^1, M^2. [3] morust M^1. [4] *Ins.* etc. *G*; *Ins.* etc. et deivent etc. M^1, M^2. [5] *For* vostre pere *subs.* Robert vostre auncestre M^1, M^2. [6] *Ins.* qe M^1, M^2. [7] furent M^1, M^2. [8] auncestre M^1, M^2. [9] *Ins.* tut M^1. [10] si vous pussez M^1. [11] *Ins.* a ceo fet M^2. [12] *Ins.* a ly M^1, M^2. [13] *For* nous ne pledoms, *subs.* a nous n'est M^1. [14] *sic B*, fo' *G*, fesom M^1, M^2. [15] pere M^1, M^2; *Ins.* a *G*, M^2.

Translation of the Records—*continued.*

right of him the said Roger, and granted for himself and his heirs that the aforesaid tenements with the appurtenances, which the aforesaid Sarah held for the term of her life of the inheritance of him the said Nicholas in the aforesaid vill on the day on which this agreement was made and which after the decease of her the said Sarah to the aforesaid Nicholas and his heirs ought to revert after the decease of her the said Sarah are to remain wholly to the aforesaid Roger and Margery and the heirs of him the said Roger to hold of the chief lords of that fee by the services, which to those tenements belong, forever. And this agreement was made in the presence of and with the confirmation of the aforesaid Sarah; and she did fealty to the same Roger and Margery in the same court.

19. LE PESTUR *v.* RY.

I.

Formedon. The tenant put forward an unconditional charter made by the ancestor of the demandant without a reservation of the reversion to himself. To this the demandant said that the tenant was neither privy nor party to the deed. Therefore etc.

[Thomas the son of Walter le Pestur] brought his writ of formedon in the reverter against [Alan], and said that [Walter] his [great-grand-] father gave these tenements to one [Roger] and the heirs of his body issuing etc.; and because Roger died without an heir [of his body] etc. reverted etc.

Herle. What have you of the form?

Roston. Ready are we etc.

Laufare. To that you will not come, for see here the deed of your [great-grand]father, which witnesses that the tenements were given in fee simple to the aforesaid [Roger]. We ask judgment if against the deed of your [great-grand]father you ought to come to that averment.

Roston. The tenant is not privy but a stranger to that deed. We ask judgment if he ought to deprive us of that averment.

Malberthorpe. He is sufficiently privy to the deed, for he is tenant of the tenements, and it is for him to defend his tenancy.

Roston. He is not the man to whom the deed was made, nor is he his heir; and he shows no specialty by which he has come to these tenements and thereby can make himself privy. We ask judgment etc., for if he wished to vouch us he would not be received etc.

Herle. We are not pleading to bar you by reason of warranty, but to bar you from the averment; and we do this by the deed of your ancestor, whose heir you are.

Malm.[1] Si heir en la descente portast son bref et le tenaunt usast ceo fait encontre luy, il serreit bien resceu d'averer la forme, pur ceo q'il n'est pas partie etc. Mès de pus q'il est privé a ceo fait, a prendre l'averement encountre ceo fait la ou il n'ad qe vent, ceo ne serroit pas reson.

Ber.[2] Si heir portast son bref d'entré *ad terminum qui preteriit* du lees fait[3] par son pere et homme luy demaundast ceo q'il eust[4] del terme et il tendist d'averer etc. et le tenaunt meist avant fait qe tesmoignast le doun simple[5] serreit il resceu d'averer le lees etc. encountre le fait[6] son pere qe tesmoigne fee? Certes, noun serreit; nent plus par de cea.

Roston. Il est privé al fait en le cas ou[7] vous moy mettez, et issi n'estes[8] pas partie a ceo fait, par quei etc.

Malm. Assez sumes nous privé, qe nous sumes tenauntz des tenementz; et vous dioms qe nous sumes feffez par mesmes cestuy Johan. (Et mist avaunt fait del assignement gratis et non[9] cohercione.)

Ber. Ceo q'il vous dit, si proeve[10] il par fait, q'il ad mys avant[11] le fait vostre pere etc. et sur ceo[12] fait d'assignement par quei[13] nous devoms doner plus de fay a luy qe a vous, qe n'avetz qe vent, la (mette ceux ij foiz[14] etc.[15]; qe jeo pose qe vous portez[16] bref de dreit devers luy et demaundassez de la seisine vostre pere,[17] il dirroit bien qe vostre pere enfeffa un tiel par sa chartre et mettroit avant la chartre et dirroit outre qe mesme celuy enfeffa etc. et[18] mettroit[19] avant chartre d'assignement et se mettroit en dieu et en la graunte assise etc.[20] a tenir etc. par ceux faitz etc. ne serroit ceo pas bone myse?

Rost. Celes chartres[21] ne sount pas barre, eynz serrount mys en evidence de la seisine.[22]

Malb.[23] Nous sumes bien a un qe R. fut seisi et dona, mès la ou il dit q'il les dona en fee taillé et de ceo n'ad qe vent et nous moustroms etc. q'il les dona en[24] fee simple; par quei il covent a ceo respoundre, qe si le fait soit bon s'accioun est nul, et si le fait soit malvoix s'accioun est assetz cler.

Rost.[25] Il n'est mye en ceo cas auxi com quitecleimaunce eust esté

[1] *Toud.* M^1. [2] *Om. Ber.* M^1. [3] *Om.* fait M^1. [4] avoit M^1, M^2. [5] *For* le doun simple *subs.* q'il dona en fee M^1, M^2. [6] chartre M^1, M^2. [7] qe M^2. [8] *Ins.* il (*interlineation*) *B*; *ins.* vous M^1, M^2. [9] sine *G*. [10] content M^1. [11] *Ins.* qar il ad mys avant M^1, M^2, *sim. G*. [12] *Ins.* met avaunt M^1, M^2. [13] donqe M^1, M^2. [14] *sic B*; fetz *G*, M^2; fetez M^1. [15] *Om.* etc. *Ins.* a les queux purra plus de foy doner M^1, M^2. [16] eussez ore porté M^1, M^2. [17] auncestre M^1. *Om.* vostre pere M^2. [18] *Om.* mettroit avant . . . etc. et M^1. [19] meist M^1, mist M^2. [20] *Om.* etc. *Ins.* le quel il ad meur dreit, M^1, M^2. [21] heirs M^2. [22] del assise *B*, dil assise *G*. [23] Hing M^1. [24] *For* etc. . . . en *subs.* assez q'il avoit M^1; assez q'il les dona en M^2. [25] *Toud.* M^1.

Malberthorpe. If the heir in the descender were to bring his writ, and the tenant used this deed against him, the heir would be well received to aver the form, because the tenant is not party to the deed; but inasmuch as the demandant is privy to this deed, to take his averment against the deed, where he has only word of mouth, would not be right.

Bereford C.J. If the heir were to bring his writ of entry *ad terminum qui preteriit* on a lease made by his father, and if being asked what he had of the term he offered to aver it etc., and if the tenant were to produce a deed which witnessed a gift in fee simple, would the demandant be received to aver the lease etc. against the deed of his father, which witnessed the fee? Certainly, he would not, nor should he in this case.

Roston. The tenant is privy to the deed in the case which you put to me, and the tenants are not parties to this deed. Therefore etc.

Malberthorpe. We are sufficiently privy, for we are tenants of the tenements; and we tell you that we are enfeoffed by this same [Walter]. (And he produced a deed of assignment freely and without pressure.)

Bereford C.J. That which he tells you he proves by deed, for he has put forward the deed of your [great-grand]father, and after this a deed of assignment. Therefore we should give more faith to him than to you who have only word of mouth, whereas he puts forward these two deeds etc. Suppose you brought a writ of right against him and demanded on the seisin of your father, he would well say that your father enfeoffed a certain man by his charter, and he would put forward the charter; and he would say further that this same man enfeoffed another etc. and he would put forward the charter of assignment, and put himself on God and the grand assize [whether he had the greater right] to hold etc. by these deeds etc. Would not that be a good 'mise'?

Roston. These charters are not a bar; but they would be put as evidence of the seisin.

Malberthorpe. We are quite at one that [Walter] was seised and gave these tenements; but where he says that he gave them in fee tail, and of that has only word of mouth, we show etc. that he gave them in fee simple. Therefore he must answer this deed, for if the deed be good his action is void; and if the deed be bad his action is clear enough.

Roston. It is not in this case as if a quitclaim had been put forward;

mys avant, qe quitecleimaunce barre en qi mayns q'il soit trové, mès issint ne fait pas chartre s'il ne soit privé a la chartre.[1]

Hedon.[2] Il peot ester simul[3] q'il dona les tenementz en fee taillé auxi com nous dioms et q'il luy fit[4] pus[5] cele chartre qe tesmoigne fee simple la quele chartre n'esteynt pas la taille mesq'il[6] eust fyn levé.

Malm. C'est une voie de pleder, qe si vous volez conustre ceo qe vous dites[7] vous averetz[8] jugement encountre vous, einz ceo qe vous aillez de la barre.

Et[9] est racio *Willelmi de Ber.* qe[10] les tenementz furent donez en fee taillé et pus le donour relessa et quitecleima a celuy a qi les tenementz furent ensi donez ; ou s'il luy fit une chartre simple saunz condicioun coment qe ceo fait[11] n'esteynt pas la taillé en le descente, il esteynt la reversioun *de necessitate*[12] *etc.*

II.[13]

Forme de doun en le *reuerti* ou le tenant mist avant especiauté qe le doun se fist en fee simple.

Un A. porta son bref de forme de doun en le *reuerti* e demanda certeyns tenemenz e dit qe les tenemenz furent donez a T. etc. e a les heirs de son[14] corps engendrez e les queux après la mort T. a[15] A.[16] deyvent revertir pur ceo qe T. murust sanz heir de son corps engendré.

Byngh. Avetz rens de la forme ?

Roston. Prest del averrer.

Bingh. Sire, nous vous dioms qe la ou ele[17] demande ceux tenemenz e dit qe a ly deivent etc.[18] pur ce qe T. murust sanz heir etc. Sire, nous vous dioms qe W. piere A. dona mesme les tenemenz a T. en fee simple par my ceste chartre qe ci est. E veetz ci fait[19] faite a nous. Et demandoms jugement si encontre le fait son auncestre puisse cesti bref user.

Roust. Et nous jugement del hure qe nous tendoms d'averrer la forme e il mette avant fait a nous barrer ou il n'est pas partie ne privé a celui a qi le fait se fist. Demandoms jugement si par fait en mayn d'estrange devoms estre barré.

[1] *Om.* s'il . . . chartre M^2. [2] *Herle* M^1, *Ruston* M^2. [3] *For* Il . . . simul *subs.* Il put ensemble ester *G*, Il ne put ensemble estre mult bien M^1 ; similarly in M^2 (but without the word *ne*). [4] *sic* M^1, M^2 ; fu *B*. [5] *Om.* pus *G*. [6] mès s'il M^1. [7] *Om.* qe vous dites M^1, M^2. [8] avez M^1. [9] *Ins.* hec M^1, M^2. [10] si *G*, M^2. [11] *Ins.* seit fet il M^1. [12] The correct reading of this word is doubtful. [13] From *D* collated with *P*. [14] lour ij corps *P*. [15] e *D*, *P*. [16] *Ins.* a ly *P*. [17] il *P*. [18] revertir *P*. [19] *Ins.* de T. *P*.

for a quitclaim bars in the hands of whomsoever it may be found; but a charter does not operate thus, if he in whose hands it may be, be not privy to the charter.

Hedon. The two things may be consistent, that he gave the tenements in fee tail as we have said, and that he afterwards made to him this charter which witnesses fee simple, which charter does not extinguish the estate tail without a fine being levied.

Malberthorpe. That is one mode of pleading. If you wish to acknowledge what you have said you will have judgment against you before you go from the bar.

And this is the argument of Bereford C.J. The tenements were given in fee tail and then the donor released and quitclaimed to him to whom the tenements were so given. If he made to him a simple charter without condition although that deed does not extinguish the estate tail in the descent it necessarily extinguishes the reversion.[1]

II.

Formedon in the reverter. The tenant put forward a specialty showing that the gift was made in fee simple.

[Thomas the son of Walter le Pestur] brought his writ of formedon in the reverter and demanded certain tenements; and said that the tenements were given to [Roger] etc. and the heirs of his body begotten, which tenements after the death of Roger ought to revert to him [Thomas] because [Roger] died without an heir of his body begotten.

Bingham. Have you anything of the form?

Roston. Ready are we to aver it.

Bingham. There where he demands these tenements and says that they ought to revert to him etc. because [Roger] died without an heir, Sir, we tell you that W. the [great-grand]father of [Thomas] gave these same tenements to [Roger] in fee simple by this charter which is here. See here the deed made to us. We ask judgment if against the deed of his ancestor he can use this writ.

Roston. And we ask judgment, seeing that we offer to aver the form; and he puts forward a deed to bar us, to which he is not a party nor is he privy to him to whom the deed is made. We ask judgment if by a deed in the hands of a stranger we ought to be barred.

[1] See note 12 opposite.

Ber. Il met avant le fait vostre auncestre qe tesmoigne q'il dona en fee simple e ovesqe ceo met avant de cely a qi le doun se fist assignement e vous ne moustrez rens de la forme si noun vente. Le quel devoms avoir greyndre regarde, al fait vostre auncestre e al autre fait d'assignement, ou al averrement encontre le fait vostre auncestre? par quei volez respondre al fait.

Roston. S'il y eust fyne levé sur tele manere de[1] douns par statut il ne serroit de nule force.

Byngh. Vous dites veritée. Si le primer en la taillé ust[2] doné il ne cherroit en prejudice de son issu e[3] del donour, mès nous mettoms avant le fait le donour qi heir vous estes qe put esteindre chescun manere de reversion. Et demandoms jugement si vous encontre le fait vostre auncestre qe testmoigne la reversion estre esteinte devez estre respondu.

Ber. Est ceo le fait vostre auncestre ou noun?

Roston. Si vous agardez, nous dirroms[4] assetz.

The Record of the Case.

De Banco Rolls, 4 Edw. II., Trinity (No. 187), r. 116d., Lincolnshire.

Thomas filius Walteri le Pestur de Suthwaynflet per attornatum suum petit uersus Alanum de Ry de Wrangle et Matillidem uxorem eius tresdecim acras prati cum pertinenciis in Wrangle quas Walterus filius Roberti le Pestur proauus predicti Thome cuius heres ipse est dedit Rogero filio Walteri le Pestur et heredibus de corpore suo exeuntibus et que post mortem predicti Rogeri ad prefatum Thomam reuerti debent per formam donacionis predicte eo quod predictus Rogerus obiit sine herede de corpore suo exeunte etc. Et unde dicit quod predictus Walterus filius Roberti fuit seisitus de predictis tenementis cum pertinenciis in dominico suo ut de feodo et iure tempore pacis tempore regis Henrici aui domini regis nunc capiendo inde explecia ad ualenciam etc. et illa dedit predicto Rogero et heredibus de corpore suo exeuntibus in forma predicta etc. per cuius donum idem Rogerus fuit seisitus etc. et que post mortem predicti Rogeri eo quod idem Rogerus obiit sine herede de corpore suo exeunte etc. ad prefatum Thomam reuerti debent etc. Et de ipso Waltero descendit ius reuersionis etc. cuidam Thome ut filio et heredi etc. et de ipso Thoma cuidam Waltero ut filio et heredi et de ipso Waltero descendit ius reuersionis etc. isti Thome qui nunc petit ut filio et heredi. Et inde producit sectam etc.

Et Alanus et Matillis per attornatum suum ueniunt et defendunt ius suum quando etc. Et petunt quod predictus Thomas ostendant si quod speciale factum habeat de donacione predicta etc.

[1] des *P.* [2] est *D.* [3] ne *P.* [4] respoundroms *P.*

Bereford C.J. He puts forward the deed of your ancestor which witnesses that he gave the tenements in fee simple; and therewith he puts forward an assignment from him to whom the gift was made, and you show nothing of the form save mere words. Should we have greater regard to the deed of your ancestor and the other deed of assignment or to the averment against the deed of your ancestor? Will you therefore answer the deed.

Roston. If a fine had been levied upon a gift of this kind, it would by statute be of no effect.

Bingham. You are right. If the first tenant in tail had given, the gift would not be to the prejudice of the issue or of the donor; but we put forward the deed of the donor, whose heir you are, and this can extinguish every kind of reversion. We ask judgment if you against the deed of your ancestor which witnesses that the reversion is extinguished ought to be answered.

Bereford C.J. Is this the deed of your ancestor or not?

Roston. If you so award we will make sufficient answer.

Translation of the Record.

For the reference, see opposite.

Thomas the son of Walter le Pestur of South Wainfleet by his attorney demands against Alan of Ry of Wrangle and Maud his wife thirteen acres of meadow with the appurtenances in Wrangle which Walter the son of Robert le Pestur the great-grandfather of the aforesaid Thomas whose heir he is gave to Roger the son of Walter le Pestur and the heirs of his body issuing and which after the death of the aforesaid Roger to the aforesaid Thomas ought to revert by the form of the gift aforesaid on the ground that the aforesaid Roger died without an heir of his body issuing etc. And whereupon he says that the aforesaid Walter the son of Robert was seised of the aforesaid tenements with the appurtenances in his demesne as of fee and right in time of peace in the time of king Henry the grandfather of the king who now is, taking thereof the profits to the value etc.; and these tenements he gave to the aforesaid Roger and the heirs of his body issuing in the form aforesaid etc. by whose gift the same Roger was seised etc. and which after the death of the aforesaid Roger on the ground that the same Roger died without an heir of his body issuing etc. to the aforesaid Thomas ought to revert etc. And from him the said Walter descended the right of the reversion etc. to one Thomas as son and heir etc. and from him the said Thomas to one Walter as son and heir and from him the said Walter descended the right of the reversion etc. to this Thomas who now demands as son and heir. And thereof he brings suit etc.

And Alan and Maud by their attorney come and deny the right of Thomas when etc. and ask that the aforesaid Thomas show what specialty he has of the gift aforesaid etc.

The Record of the Case—*continued.*

Idem Thomas nichil inde ostendit etc. set dicit quod ipse paratus est formam donacionis predicte uerificare etc.

Et Alanus et Matillis dicunt quod idem Thomas ad uerificacionem patrie admitti non debet in hac parte etc. Dicunt enim quod predictus Walterus de cuius seisina etc. dedit concessit et carta sua confirmauit predicto Rogero cuius statum iidem Alanus et Matillis modo habent etc. predicta tenementa cum pertinenciis habenda et tenenda eidem Rogero et heredibus suis in feodo simplici etc. Et profert cartam predicti Walteri proaui etc. que hoc testatur etc. Et petit iudicium si predictus Thomas per simplicem uocem etc. contra testimonium facti antecessoris sui predicti ad aliquam uerificacionem patrie attingere debeat etc.

Et Thomas dicit quod predictus Alanus et Matillis per cartam predictam accionem suam prorogare non potest ad auferendam ei uerificacionem patrie in hoc casu etc. Dicit enim quod iidem Alanus et Matillis omnino sunt extranei facto predicto per quod pars esse non possunt ad factum predictum triandum. Et petit iudicium etc.

Et Alanus et Matillis proferunt quamdam aliam cartam sub nomine predicti Rogeri filii Walteri que testatur quod idem Rogerus dedit eis tenementa predicta tenenda sibi et heredibus ipsius Alani etc. Et ex quo iidem Alanus et Matillis pretendunt cartam ipsius Walteri proaui etc., que testatur feodum simplex, factam predicto Rogero filio Walteri et eciam ostendunt curie qualiter ipsi habent statum eiusdem Rogeri etc. qui quidem Thomas ad predictam cartam antecessoris sui nichil respondet etc. petunt iudicium etc.

Dies datus est eis de audiendo inde iudicio suo hic in crastino sancti Martini etc. saluis partibus racionibus suis etc.

Postea a die Pasche in tres septimanas proximo sequente continuato processu etc. uenit predictus Thomas et similiter predictus Alanus et Matillis per Walterum de Waynflet attornatum suum. Et Thomas dicit quod predicta carta quam predicti Alanus et Matillis proferunt sub nomine predicti Walteri filii Roberti proaui etc. ei preiudicare non debet, quia dicit quod carta illa non est factum ipsius Walteri filii Roberti. Et hoc petit quod inquiratur per patriam. Et predicti Alanus et Matillis similiter. Ideo preceptum est uicecomiti quod uenire faciat hic a die sancti Michaelis in xv dies xij etc. per quos etc. et qui nec etc. ad recognoscendum etc. quia tam etc.

Et sciendum quod predicta carta remanet in custodia I. Bacoun clerici regis custodienda.

Translation of the Record—*continued.*

The same Thomas shows nothing thereof etc. but says that he is ready to aver the form of the gift aforesaid etc.

And Alan and Maud say that the same Thomas ought not to be admitted to an averment of the country in this behalf etc.; for they say that the aforesaid Walter of whose seisin etc. gave granted and with his charter confirmed the aforesaid tenements with the appurtenances to the aforesaid Roger whose estate the same Alan and Maud now have etc. to have and to hold to the same Roger and his heirs in fee simple etc. And he proffers the charter of the aforesaid Walter the great-grandfather etc. which witnesses this etc. And he asks judgment whether the aforesaid Thomas by his simple word etc. against the testimony of the deed of his ancestor aforesaid etc. ought to arrive at any averment of the country etc.

And Thomas says that the aforesaid Alan and Maud by the aforesaid charter cannot retard his action and take away from him the averment of the country in this case etc. for he says that the same Alan and Maud are wholly strangers to the aforesaid deed, wherefore they cannot be a party to try the deed aforesaid. And he asks judgment etc.

And Alan and Maud proffer a certain other charter under the name of the aforesaid Roger the son of Walter which witnesses that the same Roger gave the tenements to them to hold to them and the heirs of him the said Alan etc. And since the same Alan and Maud put forward the charter of him the said Walter the great-grandfather etc. which witnesses fee simple, made to the aforesaid Roger the son of Walter; and since they also show to the court how they have the estate of the same Roger etc. and this same Thomas to the charter of his ancestor makes no answer etc., they ask judgment etc.

A day is given to them for hearing their judgment thereof here on the morrow of St. Martin etc. saving to the parties their arguments etc.

Afterwards three weeks after Easter next following, process having been continued etc. the aforesaid Thomas came; and likewise the aforesaid Alan and Maud by Walter of Wainfleet their attorney. And Thomas says that the aforesaid charter which the aforesaid Alan and Maud proffer under the name of the aforesaid Walter the son of Robert the great-grandfather etc. ought not to prejudice him, because he says that that charter is not the deed of him the said Walter the son of Robert. And he seeks that this may be inquired by the country. And the aforesaid Alan and Maud likewise. Therefore the sheriff is ordered to cause to come here on the quindene of St. Michael twelve etc. by whom etc. and who neither etc. to make recognition etc. because as well etc.

And be it known that the aforesaid charter remains in the custody of John Bacon, the king's clerk.

20. ANON.

I.[1]

Fourme [de] doun, ou enfaunt deinz age fut vouché par especiauté. Et le voucher countrepledé par estatut, et le countrepleder nent alowé avaunt ceo q'il avoit pleynement servy le statut. Simile in termino Michaelis anno xvij.

Un home[2] porta soun[3] bref de fourme de doun en le *reuerti*. Le tenaunt voucha a garraunt un enfaunt deinz age, et ne myst nule chose[4] avaunt pur ly lier[5] etc.

Toud. (pur le demaundaunt). Yl ount vouché a garraunt un enfaunt deynz age et ne moustre nul etc. Jugement etc. du voucher.

Ing. Veietz cy le fait soun auncestre. (Et myst avaunt une quite-clamaunce fet par le pere l'enfaunt et fuist compris etc.[6] la clause de garrauntie.)

Toud. La ou il vouche cel enfaunt deinz age par my le fait son pere, nous vous dyoms qe soun pere, par qi fet il le veot voucher et[7] lier, ne fuist unqes seisi en demene n'en service puis la seisine nostre auncestre, de qi seisine nous contoms[8] issint q'il poieit estat fere. Jugement, prest etc.

Hingh. Cel excepcion qe vous mettet avaunt pur nous ouster de nostre voucher, sy est douné par statut ; dounqe il la vous covyent user par les paroules de statut et solome ceo qe statut vous doune. Mès l'estatut vous doune qe cy celuy q'est[9] vouché ne nul de ces auncestres n'avoit seisine de la terre ou des tenementz en fee n'en service par la mayn le tenaunt ou ses auncestres puis le temps celui de qi seisine le demaundaunt counte. Et vous dites qe l'enfaunt ne son auncestre, qi fait c'est, ne fut unqes seisi en demene etc. la ou l'estatut vous doune q'il ne nul de ses auncestres etc. Jugement si vous nous puissetz de ceo voucher oster sauntz user l'excepcion auxi largement com estatut vous doune.

Ber. Est ceo mestir q'il respoigne plus haut qe al estat[10] l'auncestre qi fait[11] etc. depuys q'il voillent averer qe celuy unqes a nul temps ne fut seisi en demene ? Quei voletz vous plus ? (*quasi diceret*, C'est assetz).

[1] From *B* collated with *G*, *M*, and *R*. The headnote is from *G*. [2] femme *R*. [3] *For* Un . . . soun *subs.* En un *M*. [4] chartre *M*. [5] *Ins.* a la garantie *R*. [6] *Ins.* et *B*. [7] *Om.* voucher et *M*. [8] tendoms *B*, contoms *G*, *M*, *R*. [9] qe *G*. [10] fet *M*. [11] *For* qi fait *subs.* qe par fet qe *M*.

20. ANON.[1]

I.

Formedon. An infant within age was vouched by specialty and the voucher was counterpleaded by the demandant by the statute. The counterplea was not allowed until the demandant had fully complied with the statute. Similarly in Michaelmas term in the seventeenth year.[2]

A man brought his writ of formedon in the reverter. The tenant vouched to warranty an infant within age, and produced nothing to bind him etc.

Toudeby (for the demandant). They have vouched to warranty an infant within age, and they show nothing etc. We ask judgment etc. of the voucher.

Ingham. See here the deed of his ancestor; (and he produced a quitclaim made by the father of the infant, and it contained a warranty clause).

Toudeby. Whereas he vouches this infant within age by the deed of his father, we tell you that his father by whose deed he wishes to vouch and bind him was never so seised, either in demesne or in service, after the seisin of our ancestor of whose seisin we count, that he could make an estate. We ask judgment. Ready etc.

Ingham. This exception which you put forward to oust us from our voucher is given by statute.[3] Therefore you must use it in the words of the statute, and according as the statute provides. But the statute provides that 'if neither he who is vouched nor any of his ancestors had seisin of the land or the tenements in fee or in service by the hand of the tenant or his ancestors, after the time of him of whose seisin the demandant counts'; and you say that neither the infant nor his ancestor, whose deed this is, was ever seised in demesne etc., whereas the statute says 'neither he nor any of his ancestors etc.' We ask judgment whether you can oust us from this voucher, without using the exception as widely as the statute provides.

Bereford C.J. Is it necessary that he answer higher than to the estate of the ancestor whose deed etc., seeing that they wish to aver that he was never at any time seised in demesne? What more do you wish? (*as if to say*, That is enough).

[1] This is *Fitz.* Book i. fol. 237, Counterple de voucher, No. 103.

[2] This seems to be a wrong reference. Not improbably the case in Michaelmas term 15 Edw. II. which begins in the Old Edition (p. 447) with the words 'Un G. de B. porta son brief de formedon' may be meant.

[3] Stat. Westm. I. c. 40; Stat. de Presentibus Uocatis, 20 Edw. I.

Ing. A la commune ley homme purra voucher qi q'il voudra, garzoun ou altre, et pur la graunte duresce qe poet ensuyre, si fut l'estatut purveu, dount covent q'il se eident par parole d'estatut.

Toud.[1] L'estatut nous doune nostre respounse la ou homme de pleyn age est vouché, la ou il[2] n'estovercit pas de mettre especiauté avaunt. Mès ore ne sumes nent en ceo cas, qe la ou il vouche l'enfaunt par especiauté la pernoms nostre response partie de cel especiauté, dount assez nous suffit d'oster vous de vostre respounse, com[3] a dire qe celuy q'est vouché ne son auncestre, qi fait etc. pus la seisine etc. et ceo voloms averer.

Hing. Statut ne fait nul destinxion le quel le vouché soit[4] deynz age ou[5] pleyn age, par quei il covent qe vous respoignez *ut supra*, qe si vous responez solom statut, nous vous traverseroms meyntenaunt.

(*Ad alium diem.*) *Toud.* vist bien son respounse estre contrariaunt al statut et savoit q'il ne les poet pas ouster del voucher, par ceo q'il avoient dit ; et respoundi[6] et dit qe le vouché ne nul de ses auncestres ne fut unqes etc. *ut supra* puys la seisine R. et M. a queux les tenementz furent donez en fee taillé, prest etc.

Hing. Unqore n'est ceo pas respounse[7] pur nous ouster de nostre voucher qe vous pernez vostre title de la seisine le donour vostre auncestre et nent de la seisine R. et M. a qi etc. dount il vous[8] covent dire qe celuy q'est vouché pus la seisine vostre auncestre qe fut donour et de qi vous avetz[9] vostre title.

Ber. C'est un bref en le *reuerti* et il prent son[10] title del donour etc.

Toud. Non tantum del donour, eynz de luy et de ceux[11] a queux le doun se fist, par quei il semble qe assez avoms dit pur luy ouster de cel voucher.

Et cel respounse ne fut nent allowé.

Toud. Sire, nous vous dioms q'il ne fut unqes seisi en demene ne en service ne nul de ses auncestres pus la seisine nostre auncestre de qi nous avoms pris nostre title, prest etc.

Et alii econtra.[12]

[1] *Ins.* Si *R.* [2] *Om.* ou il *R.* [3] *Om.* com. *M.* [4] *For* lequel . . . soit *subs.* d'enfant *M.* [5] *For* ou, *subs.* vouche ne homme de *M.* [6] *Ins.* uncore *G, R* ; *Ins.* moez *M.* [7] resoun *M.* [8] *Om.* vous *G.* [9] *Ins.* pris *M.* [10] *For* et . . . son *subs.* ou vous pernet vostre *R.* [11] toux *B.* [12] *Add* Et sic ad patriam *M.*

Ingham. At the common law a man could vouch whom he would, a boy or another, and for the great hardship which could ensue, the statute was provided. Therefore they must aid themselves by the words of the statute.

Toudeby. The statute gives us our reply, where a man of full age is vouched, and there there is no need to produce specialty. But now we are not in that case, for whereas he vouches the infant by specialty, we make our answer in part on that specialty ; therefore it is sufficient for us to oust you from your reply, to say ' that neither he who is vouched nor his ancestor whose deed etc. after the seisin etc.' And this we wish to aver.

Ingham. The statute makes no distinction whether the person vouched is within age or of full age. Therefore it is necessary that you answer (as stated above). If you answer according to the statute we will traverse you forthwith.

On another day *Toudeby* saw clearly that his reply was contrary to the statute, and he knew that he could not oust the tenants from their voucher by what [he] had stated ; and he answered and said that neither the vouchee nor *any of* his ancestors were ever seised etc. (as above) after the seisin of R. and M. to whom the tenements were given in fee tail. Ready etc.

Ingham. Still this is not an answer to oust us from our voucher, for you take your title from the seisin of the donor of your ancestor, and not from the seisin of R. and M. to whom etc. Therefore you must say ' of him who is vouched after the seisin of your ancestor who was donor and from whom you have your title.'

Bereford C.J. This is a writ in the reverter and the demandant takes his title from the donor etc.

Toudeby. Not only from the donor, but from him and those to whom the gift was made. Therefore it seems that we have said enough to oust him from this voucher.

This answer was not allowed.

Toudeby. Sir, we tell you that neither he nor any of his ancestors was ever seised either in his demesne or in service after the seisin of our ancestor, from whom we have taken our title. Ready etc.

And the others to the contrary.

II.[1]

Forme de doun en le *reuerti* ou le tenant voucha etc. L'autre lui contrepleda par statut.

Un homme porta son bref de forme de doun en le *reuerti*. Le tenant voucha a garaunt un enfaunt deinz age e par fait etc.

Mal. Sire,[2] la ou il vouche etc. un enfaunt etc. par le fait son pere, Sire, nous vous dioms qe le piere le vouché n'avoit rens en ceux tenemenz q'ore sont en demande ne[3] en demene ne en service, par quei q'il pout estat faire al tenant ou a ses auncestres, prest etc. E demandoms jugement de ceo voucher.

Ingh. Vous dites trop poy si vous diez qe l'auncestre le vouché ne le vouché n'avoit rens en etc.[4] pus la seisine celui[5] de qi seisine vous demandez solom ceo qe statut vous doune.

E pus *Malm.* tendit l'averement, ' pus la seisine cely a qi le doun se fit[6] en fee taillé,' e ne fu pas resceu, mès fu chacée al averement[7] ' pus la seisine le donour ' par *Beref.*

III.[8]

Ou garaunt voucher fust abatu etc.

Johan de Laumbron porta sun bref de formedoun en le *reuerti* vers C.

Hengham. C. vouche a garant par aide de ceste court Johan fiz e heir H. (E mist a la cort le fet H. qe voleit qe H. avoit relessé e quiteclamé les tenemenz a ly et estre ceo obliga lui et ses heirs a la garantie.)

Ber. Savez rien dire encontre ceo voucher ?

Touth. Il nous bie delaier par ceo vocher tanke al age l'enfant par le fet H. A ceo vous dioms qe H. ne fust unkes seisi en demene ne en service, dount il poet lees fere ; e prest del averer, s'il voet dedire. Et demaundoms jugement etc.

Hengh. Vous pernez vostre repplicacion del statut e vous nel poez plus largement user qe les paroles del statut ne vous dounent ; mès le travers del statut si est, ' qe celui ne ses auncestres etc.' Et pur ceo dites ceo, qar a la commune lei tiel voucher fust resceivable.

[1] From *D* collated with *C* and *Q* and *T*. [2] *Om.* Sire *C*, *Q*. [3] *Om.* ne *C*, *Q*. [4] *Om.* poy . . . etc. *C*, *Q*. [5] *Om.* celui *C*, *Q*. [6] *For* le . . . fit *subs.* les tenementz furent donez *C*, *Q*. [7] *For* al averement *subs.* a dire *C*, *Q*. [8] From *Y* (fol. 109v°).

II.

Formedon in the reverter where the tenant vouched etc. The demandant counterpleaded him by the statute.

A man brought his writ of formedon in the reverter. The tenant vouched to warranty an infant within age by a deed etc.

Malberthorpe. Sir, there where he vouches etc. an infant etc. by the deed of his father, there we tell you that the father of the vouchee had nothing in these tenements which are now in demand either in demesne or in service, whereby he could make an estate to the tenant or his ancestors. Ready etc. We ask judgment of that voucher.

Hengham. You say too little, according to what the statute[1] allows you, if you do not[2] say that neither the ancestor of the vouchee nor the vouchee had anything in etc. after the seisin of him on whose seisin you demand.

Then *Malberthorpe* offered the averment 'after the seisin of him to whom the gift was made in fee tail.' And he was not received, but was driven to the averment 'after the seisin of the donor' by Bereford C.J.

III.

Where a voucher to warranty was abated.

John of Laumbron brought his writ of formedon in the reverter against C.

Hengham. C. vouches to warranty by aid of this court John the son and heir of H. (And he put before the court the deed of H. which stated that H. had released and quitclaimed to him the tenements, and besides this bound himself and his heirs to warranty.)

Bereford C.J. Can you say anything against this voucher?

Toudeby. He wishes to make us wait by this voucher by the deed of H. until the full age of the infant. To that we tell you that H. never was seised either in demesne or in service, so that he could make a lease. Ready are we to aver this, if he wishes to deny it. We ask judgment etc.

Hengham. You base your reply on the statute. You cannot use the statute in a wider manner than the words of the statute allow you. But the traverse of the statute is 'that neither he nor his ancestors etc.' Therefore say so, for at the common law such a voucher was admissible.

[1] See p. 72, note 3. [2] The argument seems to require a negative here.

Touth. Jeo n'ay mie mestier a dire, qar ceo fet qe est relesse e quiteclame auxi bien puet estre le fet le plus estrange du monde com le fet H. pur ceo qe rien ne passa par mi le fet etc.

Frisq. Quaunt l'enfant soit de plein age il poent par aventure metter avant fet de akun autre de ses auncestres, par quei etc.

Hervi a *Touth.* Si vous volez estre aidé par statut, a vous covent user les paroles del statut qe voet qe vous traversez auxi bien les auncestres etc.

Touth. Sire, nous pernom nostre title du doun fet a Johan e Margaret sa femme e les heirs de lour ij corps issantz, e pus lour seisin lui ne nul de ces auncestres ne furent unkes seisiz issi etc.

Hengham. Vous nous ne responez mie, qar vous avez dit qe vostre auncestre fu seisi en son demene com de fee e de dreit e dona, par quei il vous covent traverser ceo si vous volez defere nostre voucher.

Bere. En le *reuerti* si prent home sun title du donour e en le *descendere* de ceux a qi les tenemenz furent donez, mès si vous volez defere lour voucher, il covent qe vostre travers soit auxi haut com le temps qe vous pernez vostre title.

Touth. Lui ne ses auncestres ne furent unqes seisi pus la seisine nostre auncestre de qi nous pernoms nostre title etc. Et prest del averer.

Et alii contrarium.

21. DELEGOLD *v.* CALUELE.

I.[1]

De medio, porté par une femme tenaunt en dowere qe dit q'ele avoit fee ; et pus le seignur desclama en les services.

Une femme porta son bref de meen devers un Adam etc.

Denom. Quei avetz vous del aquitaunce ?

Hedon. Seisi de nos services.

Denom. Vous tenetz[2] en dower del dowement etc. et del assignement[3] etc. a qi la reversioun appent. Jugement si cestuy bref vers nous puissez user.

Ing. Vous estes seisi de nos services et nous sumes destreint pur vos[4] services. Jugement.

[1] From *B* collated with *G* and *M*. [2] *Ins.* les tenementz *M*. [3] *Ins.* C. fitz et heir *M*. [4] nos *B* ; vos *G*, *M*.

Toudeby. I have no need to say this, for this deed which is a release and quitclaim might as well be the deed of the most complete stranger in the world as the deed of H., because nothing passed by the deed etc.

Friskeney. When the infant is of full age he may perchance put forward the deed of some other of his ancestors. Therefore etc.

Stanton J. (*to Toudeby*). If you wish to be aided by the statute, you must use the words of the statute which intends that you traverse as well the ancestors as etc.

Toudeby. Sir, we take our title from the gift made to John and Margaret his wife and the heirs of their two bodies issuing and after their seisin neither the vouchee nor any of his ancestors were ever so seised etc.

Hengham. You make no answer, for you have said that your ancestor was seised in his demesne as of fee and of right and gave. Therefore you must traverse this, if you wish to undo our voucher.

Bereford C.J. In the formedon in the reverter a man takes his title from the donor, and in the descender from those to whom the tenements were given. If you wish to undo their voucher it is necessary that your traverse go as far back as the time from which you make your title.

Toudeby. He and his ancestors were never seised after the seisin of our ancestor from whom we make our title etc. And ready are we to aver it.

The others to the contrary.

21. DELEGOLD *v.* CALVELE.

I.

A writ of mesne brought by a woman holding in dower, who said that she had the fee, and then the lord disclaimed the services.

A woman brought her writ of mesne against [William of Calvele and Alice his wife].

Denham. What have you of the acquittance?

Hedon. You are seised of our services.

Denham. You hold in dower of the endowment etc. and by the assignment of him etc. to whom the reversion belongs. We ask judgment if you can use this writ against us.

Ingham. You are seised of our services, and we are distrained for your services. We ask judgment.

Denom. Et nous jugement, depus qe vous n'estes qe tenant en dower, et la reversion etc.[1]

[*Hing.* Desclamez en noz services ?

Denom. En la reversioun nous desclamoms.[2]]

Hing. Nous tenoms les tenementz en fee.

Denom. Coment clametz[3] vous fee ?

Hing. R. de C. a qi etc.[4] nous relessa et quitclama et issi avoms nous fee et devoms tenir de[5] chief seignurages de fee ; et avoms tendu les services a vous et fumes destreint pur vostre homage etc.

Berr. Vous dites qe vous luy avetz tendu homage etc. et il n'est pas seisi de vos services. Quidez vous[6] lier[7] al aquitaunce par le tendre, s'il ne fut seisi etc. ? (*quasi diceret*, Noun, etc.)

Denom. Nous desclamoms en les services.

Stanton. Avisetz vous del desclamer, qe altrefoith ne purretz mye destreindre pur les services etc.

II.[8]

Bref de meen ou il lui voleit lier al acquitance par le tendre des services etc.

Un Johan[9] porta son bref de meen vers A. e dit qe ele tent de lui une vergée de terre par certeyn services pur les queux A. la doit acquiter vers tote gentz.

Denum. Les tenemenz qe vous tenetz, vous les tenez en noun de douwer. Prest etc.

Byngh. Cesti bref de meen n'est pas liveré a trier le demene ne la reversion, par quei tant amont vostre respons, qe nous ne tenoms pas de vous ; par quei desclamez en les services.

Scrop. En tant com jeo die qe vous tenetz en noun de douwer del douwement Richard vostre baroun ou d'autre a qi la reversion appent, e vous ne poetz dedire qe vous ne[10] tenetz en noun de douwer, jugement.

Byngh. Nous vous dioms qe ceux tenemenz qe nous tenoms si furont en ascun temps en la seisine nostre baroun Richard, le quel Richard enfeffa pus statut Richard Davi en fee simple a tenir par forme de statute, le quel Richard Davi nous assigna ceux tenemenz en noun de douwer del douwement Richard nostre baroun, issi qe[11] après l'avantdit Richard nous relessa e quiteclama tout son dreit de la reversion a nous e a noz heirs a tenir du chef seignurage du fee issi

[1] al heir *M.* [2] The two speeches in brackets occur in *M* only. [3] avez *M.*
[4] *Om.* a qi etc. *M.* [5] a *B*, de *G*, *M.* [6] *Ins.* de *M* ; *Ins.* ly *G.* [7] *Ins.* ly *M.*
[8] From *D* collated with *P.* [9] Johanne *P.* [10] *Om.* ne *P.* [11] *Ins.* puis *P.*

Denham. And we ask judgment, seeing that you are only tenant in dower, and the reversion etc.

Ingham.[1] Do you disclaim our services ?

Denham. We disclaim the reversion.

Ingham. We hold the tenements in fee.

Denham. How do you claim fee ?

Ingham. [Richard Davy] whom [our husband enfeoffed] released and quitclaimed to us and so we have fee, and we ought to hold of the chief lords of the fee. And we have tendered our services to you, and we were distrained for your homage etc.

Bereford C.J. You say that you have tendered to him homage etc., and that he is not seised of your services. Do you think that you will bind him to the acquittance by the tender, if he was not seised etc.? (*implying that they would not*).

Denham. We disclaim the services.

Stanton J. Be well advised about the disclaimer, for another time you may not be able to distrain for the services etc.

II.

A writ of mesne, where the tenant wished to bind the mesne to the acquittance by the tender of the services etc.

One [Isabel] brought her writ of mesne against [William and Alice his wife] and said that she held of him a virgate of land by certain services for which [William and Alice] ought to acquit her against all persons.

Denham. The tenements which you hold, you hold in the name of dower. Ready etc.

Bingham. This writ of mesne is not issued to try the demesne nor the reversion. Therefore your answer amounts to this, that we do not hold of you. Therefore disclaim the services.

Scrope. Inasmuch as I say that you hold in name of dower of the endowment of Richard your husband or some other to whom the reversion belongs, and you cannot deny that you hold in name of dower, we ask judgment.

Bingham. We tell you that these tenements which we hold were sometime in the seisin of our husband Richard, and this Richard after the statute enfeoffed Richard Davy in fee simple to hold by the form of the statute ; and this Richard Davy assigned these tenements to us in the name of dower of the endowment of Richard our husband, and afterwards the aforesaid Richard Davy released and quitclaimed all his right in the reversion to us and our heirs to hold of the chief lords of

[1] See footnote 2 opposite.

sumes nous vostre tenant de dreit e nous avoms sovent tendu les services avant le bref purchacé e unqore tendoms. Jugement si le bref vers vous ne gise.

Scrop. Margerie soer Richard jadis vostre baroun est nostre tenant, e vous ne dites pas qe nous ne sumes seisi de voz services pur les queux etc. e vous estes estrange. Jugement.

Ingh. Le tendre est en lieu de seisine de services e nous vous avoms tendu e unqore tendoms issi qe nul defaute ne remaynt en nous. Jugement.

Ber. Voletz vous q'estes estrange lui reboter de son verrei tenant e faire vous tenant privé a user le bref com tenant sanz attournement precedent (*quasi diceret,* Noun).

Byngh. S'il avowe sur autre qe sur moy pur services arrere jeo lui reboterei e dirroi qe jeo fusse son tenant par forme de statute, qe jeo lui ei tendi ses services e unqore tendoms, issi moi feroi jeo privée par my le tendre en estrangisant l'autre.

Ber. Provetz cel qe vous estes tiel qe vous puissetz user cesti bref.

Stanton. Vous estes estrange devant vostre attournement, e biez[1] dereiner l'acquitance vers lui par my voz services qe vous n'avetz plus fait ; par quei ceo est le contrarie de vostre recoverir.

Byngh. Tiel est le fait, e demandoms jugement etc.

The Record of the Case.

De Banco Rolls, 4 Edw. II., Trinity (No. 187), r. 15d., Norfolk.

Willelmus de Caluele et Alicia uxor eius in misericordia pro pluribus defaltis etc.

Iidem Willelmus et Alicia summoniti fuerunt ad respondendum Isabelle que fuit uxor Ricardi Delegold de Suthbergh' de placito quod acquietet ipsam de seruicio quod Alicia que fuit uxor Edmundi de Swaththyngge ab ea exigit de libero tenemento suo quod de prefatis Willelmo et Alicia tenet in Suth Bergh' et Woderisingg' unde iidem Willelmus et Alicia qui medius est inter eos eam acquietare debet etc. Et unde eadem Isabella per attornatum suum queritur quod cum ipsa teneat de predictis Willelmo et Alicia ut de iure ipsius Alicie decem acras terre duas acras bosci duas acras prati et medietatem unius messuagii cum pertinenciis in predictis uillis per homagium fidelitatem et seruicium duorum solidorum et nouem denariorum per annum pro omni seruicio pro quibus seruiciis predicti Willelmus et Alicia ipsam

[1] *Ins.* a *P.*

the fee, so that we are your tenant in the right. And we have often tendered to you the services before the writ was purchased and we tender them still. We ask judgment whether the writ does not lie against you.

Scrope. Margaret the sister of Richard lately your husband is our tenant; and you do not say that we are seised of your services for which etc., and you are a stranger to us. We ask judgment.

Bingham.[1] The tender takes the place of seisin of the services, and we have tendered them to you, and still tender them, so that no default remains in us. We ask judgment.

Bereford C.J. Will you who are a stranger estrange her from her very tenant, and make yourself a tenant with privity so as to use the writ as a tenant but without previous attornment? (*implying*, No).

Bingham. If she were to avow upon another than upon me for services in arrear, I should estrange that man from her and say that I was her tenant by the form of the statute, and that I have tendered to her her services, and still tender them; thus I should make myself privy to her by the tender and by estranging the other.

Bereford C.J. Prove this, that you are such a person as can use this writ.

Stanton J. You are a stranger until your attornment, and you wish to deraign the acquittance against her by services of yours, which you have not done. Therefore this is against your recovery [of the acquittance].

Bingham. Such are the facts, and we ask judgment etc.

Translation of the Record.

For the reference, see opposite.

William of Calvele and Alice his wife in mercy for several defaults etc.

The same William and Alice were summoned to answer Isabel the widow of Richard Delegold of South Burgh on a plea that [they] acquit her of the services which Alice the widow of Edmond of Swaththyng demands from her for her free tenement which she holds of the aforesaid William and Alice in South Burgh and Wood Rising whereof the same William and Alice who are the mesne between them ought to acquit her etc. And whereupon the same Isabel by her attorney complains that (whereas she holds of the aforesaid William and Alice as of the right of her the said Alice ten acres of land two acres of wood two acres of meadow and a moiety of a messuage with the appurtenances in the aforesaid vills by homage fealty and the service of two shillings and nine pence a year for all services, for which services

[1] The *Ingham* of the text seems to be an error for *Bingham*.

The Record of the Case—*continued.*

acquietare debent[1] uersus quoscunque etc. predicta Alicia que fuit uxor predicti Edmundi distringit ipsam Isabellam pro homagio et fidelitate ipsius Willelmi etc. pro defectu acquietancie etc. unde dicit quod deteriorata est et dampnum habet ad ualenciam uiginti librarum. Et inde producit sectam etc.

Et Willelmus et Alicia per attornatum suum ueniunt et defendunt uim et iniuriam quando etc. et dicunt quod predicta Isabella non debet ad breue istud responderi etc. Dicunt enim quod predicta Isabella nichil habet in predictis tenementis nisi nomine dotis ex dotacione predicti Ricardi quondam uiri sui de hereditate cuiusdam Margarete filie et heredis predicti Ricardi uersus quam eadem Isabella tanquam warantum dotis sue huiusmodi acquietanciam exigere poterit in hoc casu. Et petit iudicium etc.

Et Isabella dicit reuera quod predictus Ricardus quondam uir etc. seisitus fuit de predictis tenementis etc. et illa tenuit de predictis Willelmo et Alicia ut de iure ipsius Alicie etc. qui quidem Ricardus de eisdem tenementis feoffauit quendam Ricardum Dauy tenendis sibi et heredibus suis de capitalibus dominis feodi etc. per statutum etc. Et dicit quod idem Ricardus Dauy assignauit predicta tenementa in dotem ipsius Isabelle etc. Et postea remisit et quietumclamauit in seisina ipsius Isabelle totum ius et clamium quod habuit in predictis tenementis etc. Et dicit quod ipsa modo est tenens ipsorum Willelmi et Alicie de predictis tenementis uirtute statuti etc. et quod ipsa sepius optulit eis homagium et fidelitatem suam pro predictis tenementis qui illa admittere recusauerunt etc. Et petit iudicium si predicti Willelmus et Alicia ipsam Isabellam tanquam tenentem suam etc. acquietare non debeant in hac parte etc.

Et Willelmus et Alicia dicunt quod ipsi sunt seisiti de homagio et seruicio predicte Margarete tenentis sue pro predictis tenementis etc. Et ex quo predicta Isabella cognouit quod predicti Willelmus et Alicia non sunt seisiti de homagio et fidelitate ipsius Isabelle etc. nec per consequens ipsa Isabella adhuc non sit tenens ipsorum Willelmi et Alicie sicut eadem Isabella per breue suum supponit, petit iudicium si predicta Isabella huiusmodi breui uersus eos uti debeat in hoc casu etc.

Dies datus est eis de audiendo inde iudicio suo hic a die sancti Michaelis in tres septimanas etc. Postea continuato processu usque in crastino Purificacionis beate Marie anno regni regis nunc quinto uenerunt tam predicta Isabella per Willelmum Tebaud attornatum suum quam predicti Willelmus et Alicia per Nicholaum de Reymerston attornatum suum. Et datus est eis dies de audiendo iudicio suo hic in crastino sancti Iohannis Baptiste etc. eo quod iudicium nondum etc.

[1] MS. 'debet.'

Translation of the Record—*continued.*

the aforesaid William and Alice ought to acquit her against whomsoever etc.) the aforesaid Alice the widow of Edmond distrains her the said Isabel for the homage and fealty of him the said William etc. in default of acquittance etc. Whereupon she says that she is injured and has damage to the value of twenty pounds; and thereof she brings suit etc.

And William and Alice by their attorney come and they deny tort and force when etc. And they say that the aforesaid Isabel ought not to be answered on this writ; for they say that the aforesaid Isabel has nothing in the aforesaid tenements save in the name of dower by the endowment of the aforesaid Richard sometime her husband of the inheritance of one Margaret daughter and heiress of the aforesaid Richard against whom the same Isabel could demand such acquittance in this case as against the warrantor of her dower. And they ask judgment etc.

And Isabel says that in truth the aforesaid Richard sometime her husband etc. was seised of the aforesaid tenements etc. and held them of the aforesaid William and Alice as of the right of her the said Alice etc. And this Richard enfeoffed of the same tenements one Richard Davy to hold to him and his heirs of the chief lords of the fee by statute[1] etc. And she says that the same Richard Davy assigned the aforesaid tenements in dower to her the said Isabel etc. and afterwards remised and quitclaimed when in the seisin of her the said Isabel all the right and claim which he had in the aforesaid tenements etc. And she says that she is now tenant of them the said William and Alice of the aforesaid tenements by virtue of the statute etc.; and that she often offered to them her homage and fealty for the aforesaid tenements and they refused to receive them etc. And she asks judgment whether the aforesaid William and Alice ought not to acquit her in this behalf as their tenant etc.

And William and Alice say that they are seised of the homage and service of the aforesaid Margaret their tenant for the aforesaid tenements etc. And from the fact that the aforesaid Isabel acknowledges that the aforesaid William and Alice are not seised of the homage and fealty of her the said Isabel etc. nor by consequence is she the said Isabel as yet tenant of them the said William and Alice, as the same Isabel by her writ supposes, they ask judgment whether the aforesaid Isabel ought to use such a writ as this against them in this case etc.

A day is given to them for hearing their judgment thereon here three weeks after Michaelmas etc. Afterwards process having been continued until the morrow of the Purification of the Blessed Mary 5 Edw. II. there came as well the aforesaid Isabel by William Tebaud her attorney as the aforesaid William and Alice by Nicholas of Reymerston their attorney and a day is given them here for hearing their judgment here on the morrow of St. John the Baptist on the ground that judgment has not yet etc.

[1] Stat. Westm. III. (Quia emptores).

22. MAUNSEL *v.* KAYLIE.[1]

De medio, ou dit fust q'il dust mye garrantir pur ceo q'il ount meisme accioun a demaunder les tenementz dount il bie aver l'acquitaunce.[2] Qar les tenementz pur les queux etc. furent du dreit sa ayele, et son baroun les aliena durant la coverture, par quei etc. ou le demaundaunt dit qe sa aiele pus tauntqe ele fut sole enfeffa, prest. Et alii econtra.

Un Adam porta son bref de meen devers Nichole Cailli et demaunda aquitance de homage et d'escuage et dit q'il tient de luy par mesme les services.

Hing.[3] Quei avetz del aquitance ?

Denom. Vous estes seisi de nos services, des queux nous demaundoms aquitance[4] et pur les queux nous sumes destreint etc. et vous meismes nous avetz aquité et vos auncestres nos auncestres.

Hingh.[5] Nous prioms vos recordes, q'il n'ount autre chose etc.

Hunt.[6] dit qe desicom il ne moustre especiauté ne autre chose allegge en le droit sinoun q'il tient de nous et nous seisi de ses services et dit qe nos auncestres ount aquité lour auncestres, jugement etc.

Denom. Nous avoms dit qe nous tenoms de vous et qe[7] nous sumus destreint pur vos services et vous seisi etc. Jugement.

Hingh. La ou vous dites qe nous sumus seisi de vostre homage, nyent seisi, prest etc.

Scrop. A cel averement ne devetz avenir, qe nous dioms qe nous tenoms de vous et alleggeoms chose q'est en le droit, par quei a cel averement q'est sour la possessioun d'estourter[8] de[9] l'aquitance q'est en le droit ne devetz avenir.

Hengh.[10] Vous ne moustretz especialté ne alleggetz prescripcioun qe countrevaut etc. Jugement.

Ber. Il vous dit qe vous dites rien[11] par quei il doit estre lié al aquitance.

Denom. Nous vous dioms q'un A. ael[12] meisme cestuy N. vers qi etc. en temps le roy H. enffeffa nostre miere de memes les tenementz a tenir de luy et de ses heirs etc. et il nous ad aquité et ses auncestres ount aquité nos auncestres etc.

Hing. Unqore ne ditez vous rien par quey vous nous puissetz al aquitance lier. Jugement.

[1] From *B* collated with *G*, *M*, and *R*. [2] The first part of the headnote occurs in *B* and *G*. The remainder occurs in *G* only. [3] *Ing. R.* [4] *For* des . . . aquitance *subs.* et nous demaundoms aquitaunce de mesmes les services qe nous fesoms *M*. [5] *Ing. R.* [6] In *M* this speech is attributed to *Ingham* and is introduced thus :—*Hing* issit d'enparler revynt et dit :—Desicom. . . . [7] *Om.* qe *R*. [8] destruter *G* ; dest're *R*. *Ins.* vous *M*. [9] *Om.* de *R*. [10] *Om.* Hengh. *R*. [11] *Subs.* qe vous ne dites nent *G*. *Sim. M*, *R*. [12] aiele *G*, *M*.

22. MAUNSEL *v.* KAYLIE.[1]

A writ of mesne. It was said that the mesne ought not to [acquit] because he has an action to demand the tenements whereof demandant seeks acquittance. For the tenements for which he demands acquittance were of the right of the mesne's grandmother, and her husband alienated them during the coverture, wherefore she had an action etc. The demandant said that the mesne's grandmother alienated the tenements while she was sole. Ready etc. The others to the contrary.

[Edmond Mansel] brought his writ of mesne against Nicholas of Kaylie, and demanded acquittance of homage and scutage, and said that he held of Nicholas by these same services.

Hengham. What have you of the acquittance?

Denham. You are seised of our services, and of such services we demand acquittance; and it is for such that we are distrained etc.; and you yourselves have acquitted us, and your ancestors our ancestors.

Hengham. We pray that you record that they have nothing else etc.

Huntingdon.[2] Inasmuch as Edmond shows no specialty, nor alleges anything in the right, save that he holds of us, and that we are seised of his services, and save that he says that our ancestors have acquitted his ancestors, we ask judgment etc.

Denham. We have said that we hold of you, and that we are distrained for your services, and that you are seised of our services. We ask judgment.

Hengham. Whereas you say that we are seised of your homage, we say that we are not seised. Ready are we etc.

Scrope. To that averment you ought not to come; for we say that we hold of you, and we allege something which is in the right. Therefore you ought not to come to that averment, which is in the possession, so as to deprive us of the acquittance which is in the right.

Hengham. You show no specialty, and you allege no prescription, which is worth as much as specialty etc. We ask judgment.

Bereford C.J. He tells you, that you say nothing by which he should be bound to the acquittance.

Denham. We tell you that one Amy grandmother of this same Nicholas, against whom etc., in the time of king Henry enfeoffed our mother of these same tenements to hold of her and her heirs etc.; and Nicholas has acquitted us, and his ancestors have acquitted our ancestors etc.

Hengham. You still say nothing by which you can bind us to the acquittance. We ask judgment.

[1] This is *Fitz.* Book ii. fol. 108, Mesne, No. 63. [2] See note 6 opposite.

Berr. Ne vous dit il assetz, c'est assavoir, qe vostre auncestre, qi heir etc., enfeffa son auncestre, qi heir etc. en temps le roy H. a tener de luy etc. et dit outre qe vous et vos auncestres avetz[1] aquité luy et ses auncestres pus le temps de cel feffement. Ne suffit ceo assetz? (*quasi diceret,* Sic). Veetz vous donqe si vous voilletz demorer illoeqes en jugement ou noun.

Hing. Put estre q'il fust ensint feffé a tenir de nous et estre coe[2] fesaunt as chief seignurages etc. Et d'altrepart, quey avetz vous de ceo qe vostre auncestre fust issi feffé.

Denom. Prest etc.

Ing. Sire, nous vous dioms qe Johan de L. baroun l'avauntdite Alice aele N. vers qi etc. aliena les tenementz a vostre auncestre le quel Johan n'avoit rienz etc. sinoun come baroun meisme cestuy A. et aliena,[3] par quei nous vous dioms qe meisme cele A. avoit accioun a demaunder les tenementz en demeyne après la mort l'avantdit Johan son baroun par le *cui in uita* et nous avoms meisme l'accioun. Jugement si a ceste aquitance[4] devoms respondre.

Denom qe A. vostre aiel,[5] tant come ele fut sole, enfeffa nostre mere et nent Johan son baroun, prest etc.

Hing. Si vous veetz qe cest averement est resceyvable en cestuy bref d'aquitance, nous le resceyveroms volenters.

Berr. Vous luy avetz doné cel issue, par quei veetz vous si vous luy[6] voilletz meyntenir etc. et pus est a nous a veer si l'averement est resceyvable.[7]

Et fust l'averement resceu etc.

The Record of the Case.

De Banco Rolls, 4 Edw. II., Trinity (No. 187), r. 186, Yorkshire.

Nicholaus de Kaylie in misericordia pro pluribus defaltis etc.

Idem Nicholaus summonitus fuit ad respondendum Edmundo Maunsel de placito quod acquietet ipsum de seruicio quod Henricus de Percy ab eo exigit de libero tenemento suo quod de prefato Nicholao tenet in Horton in Crauene, unde idem Nicholaus qui medius est inter eos eum acquietare debet etc. Et unde idem Edmundus per attornatum suum queritur quod cum ipse teneat de predicto Nicholao unum messuagium et unam carucatam terre cum pertinenciis etc. per homagium et fidelitatem et ad scutagium domini regis quadraginta solidorum cum acciderit duos solidos et decem denarios et ad plus plus etc. per quod idem Nicholaus ipsum Edmundum acquietare

[1] unt *G*, ount *R.* [2] *Om.* estre coe *G, M, R.* [3] *For* aliena, *subs.* Alice ne les aliena pas *M.* [4] *Ins.* q'est en le dreit *M.* [5] aiele *M, R.* [6] le *G, M, R.* [7] *Ins,* Et fust l'averement resceyvable *B.*

Bereford C.J. Has he not said enough, that is to say, that your ancestor, whose heir you are, enfeoffed his ancestor, whose heir he is, in the time of king Henry to hold of her etc.? He says further that you and your ancestors have acquitted him and his ancestors since the time of that feoffment. Is not that enough? (*implying that it was*). Consider then whether you will remain in judgment on that point or not.

Hengham. Perchance he was so enfeoffed as to hold of us, and yet to do to the chief lords etc. And besides, what have you of this that your ancestor was so enfeoffed?

Denham. Ready are we to aver it.

Hengham. Sir, we tell you that [Hugh] the husband of the aforesaid [Amy] the grandmother of Nicholas, against whom etc. alienated the tenements to your ancestor; and this [Hugh] had nothing etc. save as the husband of this same [Amy]; and he alienated. Therefore we tell you that this same Amy had an action to demand the tenements in demesne after the death of the aforesaid [Hugh] her husband by means of the *cui in uita*; and we have the same action. We ask judgment whether we must reply to this acquittance.

Denham. We say that Amy your grandmother whilst she was sole, and not [Hugh] her husband, enfeoffed our mother. Ready are we etc.

Hengham. If you think that this averment is admissible in this writ of acquittance, we will admit it willingly.

Bereford C.J. You have given him this issue, therefore it is for you to consider whether you will stand by it; and then it is for us to consider whether the averment is admissible.

And the averment was received etc.

Translation of the Record.

For the reference, see opposite.

Nicholas of Kaylie in mercy for several defaults etc.

The same Nicholas was summoned to answer Edmond Maunsel on a plea that he acquit him of the service which Henry de Percy demands from him for his free tenement which Edmond holds of the aforesaid Nicholas in Horton in Craven, whereof the same Nicholas who is mesne between them ought to acquit him etc. And whereupon the same Edmond by his attorney complains that (whereas he holds of the aforesaid Nicholas one messuage and one carucate of land with the appurtenances etc. by homage and fealty and for the king's scutage of forty shillings when it shall fall due two shillings and ten pence and for more more etc. and that by this the same Nicholas ought to acquit him the said Edmond against whomsoever etc.) the aforesaid

The Record of the Case—*continued.*

debet uersus quoscunque etc. predictus Henricus distringit ipsum Edmundum exigendo ab eodem homagium et fidelitatem et scutagium etc. pro defectu acquientancie etc. Vnde dicit quod deterioratus est et dampnum habet ad ualenciam uiginti librarum. Et inde producit sectam etc.

Et Nicholaus per attornatum suum uenit et defendit uim et iniuriam quando etc. et petit sibi ostendi per quod eum acquietare debet etc.

Et Edmundus dicit quod predicta tenementa que ipse modo tenet et unde exigit acquietanciam etc. aliquando fuerunt in seisina cuiusdam Amye auie predicti Nicholai cuius heres ipse est que tempore regis Henrici aui domini regis nunc de eisdem tenementis feoffauit quamdam Amiam matrem predicti Edmundi cuius heres ipse est tenendis sibi et heredibus suis de ipsa Amia auia ipsius Nicholai et heredibus suis imperpetuum et obligauit se et heredes[1] suos ad acquietandum etc. Et dicit quod predicta Amia auia predicti Nicholai et heredes sui, antecessores ipsius Nicholai, semper a tempore feoffamenti predicti acquietarunt ipsam Amiam matrem ipsius Edmundi etc. et ipsum Edmundum usque nunc quod predictus Nicholaus ipsum Edmundum acquietare contradixit etc. Et hoc pretendit uerificare etc. Et ea racione tenetur idem Nicholaus ipsum acquietare etc.

Et Nicholaus dicit quod per predictum feoffamentum etc. onerari non debet de acquietancia etc. Dicit enim quod feoffamentum illud factum fuit predicte Amie matri etc. per quemdam Hugonem de Hodeneth tunc uirum ipsius Amie auie predicti Nicholai etc. per quod eidem Nicholao competit accio petendi predicta tenementa de seisina ipsius Amie auie sue cuius heres ipse est. Vnde petit iudicium si ad acquientanciam artari debeat etc.

Et Edmundus dicit quod predicta Amia auia ipsius Nicholai dum sola etc. feoffauit ipsam Amiam matrem etc. de predictis tenementis in forma predicta et non predictus Hugo quondam uir etc. sicut idem Nicholaus dicit. Et quod ita sit, petit quod ueritas inde inquiratur per patriam. Et Nicholaus similiter etc.

Ideo preceptum est uicecomiti quod uenire faciat hic in octabis sancti Martini xij etc. per quos etc. et qui nec etc. ad recognoscendum etc. quia tam etc.

Postea continuato processu hinc inde usque a die sancti Michaelis in tres septimanas anno regni domini regis nunc decimo per iuratam inde inter eos positam in respectum usque in eundem terminum nisi H. le Scrop' prius etc. Et predictus Edmundus modo uenit et predictus Nicholaus non uenit. Et predictus Henricus coram quo etc. misit recordum predicte inquisicionis hic in hec verba. Postea apud Eboracum coram H. le Scrop, associato sibi Iohanne Mauleuerer, milite, die Mercurii in crastino sancti Mathei Apostoli anno regni domini regis nunc decimo uenerunt tam predictus Edmundus

[1] MS. ' heres.'

Translation of the Record—*continued.*

Henry distrains him the said Edmond demanding from him homage and fealty and scutage etc. in default of acquittance etc. Whereupon he says that he is the worse and has damage to the value of twenty pounds; and thereof he brings suit etc.

And Nicholas comes by his attorney and denies tort and force when etc.; and asks that it be shown to him by what he ought to acquit him etc.

And Edmond says that the aforesaid tenements which he now holds and whereof he demands acquittance etc. were sometime in the seisin of one Amy the grandmother of the aforesaid Nicholas, whose heir he is, who in the time of king Henry the grandfather of the lord king who now is enfeoffed one Amy the mother of the aforesaid Edmond, whose heir he is, of the same tenements to hold to her and her heirs of her the said Amy the grandmother of him the said Nicholas and her heirs for ever, and she bound herself and her heirs to acquit etc. And he says that the aforesaid Amy the grandmother of the aforesaid Nicholas and her heirs ancestors of him the said Nicholas have always from the time of the feoffment aforesaid acquitted her the said Amy the mother of this Edmond etc. and Edmond himself until now when the aforesaid Nicholas has refused to acquit him etc. And he offers to aver this etc. And for this reason the same Nicholas is bound to acquit him etc.

And Nicholas says that by the aforesaid feoffment etc. he ought not to be burdened with the acquittance etc., for he says that that feoffment was made to the aforesaid Amy the mother etc. by one Hugh of Hodeneth then the husband of her the said Amy the grandmother of the aforesaid Nicholas etc. whereby an action avails the same Nicholas for demanding the aforesaid tenements on the seisin of her the said Amy his grandmother, whose heir he is. Whereupon he asks judgment whether to the acquittance he ought to be constrained etc.

And Edmond says that the aforesaid Amy the grandmother of him the said Nicholas, while she was sole etc., and not the aforesaid Hugh sometime the husband etc. as the same Nicholas says, enfeoffed her the said Amy the mother etc. of the aforesaid tenements in the form aforesaid. And since so it is, he seeks that the truth may be inquired by the country, and Nicholas likewise etc.

Therefore the sheriff is ordered to cause to come here on the octave of St. Martin twelve etc. by whom etc. and who neither etc. to make recognition etc. because as well etc.

Afterwards process having been continued on either side until three weeks after Michaelmas in 10 Edw. II. by a jury thereof between them put in respite until the same term unless H. le Scrope first etc. And the aforesaid Edmond now came and the aforesaid Nicholas came not. And the aforesaid Henry before whom etc. sent the record of the aforesaid inquisition here in these words:—Afterwards at York before H. le Scrope, with John Mauleverer knight associated to him, on Wednesday[1] the morrow of St. Mathew the Apostle 10 Edw. II. came as well the aforesaid Edmond as the aforesaid Nicholas

[1] 22 September 1316.

The Record of the Case—*continued.*

quam predictus Nicholaus per Iohannem de Couuele attornatum ipsius Nicholai et similiter iuratores de consensu parcium electi qui dicunt super sacramentum suum quod predicta Amia auia predicti Nicholai cuius heres ipse est dum sola fuit feoffauit predictam Amiam matrem predicti Edmundi cuius heres ipse est de predictis tenementis et obligauit se et heredes suos ad acquietandam predictam Amiam matrem predicti Edmundi uersus quoscunque, et quod antecessores ipsius Nicholai semper a tempore feoffamenti predicti acquietarunt ipsam Amiam matrem predicti Edmundi et eciam ipsum Edmundum usque nunc quod predictus Nicholaus ipsum Edmundum acquietare contradixit ad dampnum ipsius Edmundi decem librarum.

Ideo consideratur quod predictus Nicholaus acquietet predictum Edmundum uersus predictum Henricum de Percy de predictis seruiciis pro predictis tenementis et quod idem Edmundus recuperet uersus predictum Nicholaum dampna sua predicta. Et idem Nicholaus in misericordia.

Et super hoc idem Edmundus elegit sibi liberari omnia bona et catalla predicti Nicholai preter boues et affros etc. et similiter medietatem terrarum et tenementorum suorum etc. tenenda etc. quousque predicta dampna inde leuauerit. Ideo habeat breue per statutum etc. et qualiter etc. scire faciat hic a die sancti Hilarii in xv dies.

Dampna x *li.* unde clericis xiij *sol.* iiij *den.*

23. WALCOTE *v.* THE ABBOT OF PERSHORE.[1]

De medio ou le defendaunt dit qe le lieu ou il fut destreint ne fut pas tenuz de luy saunz conustre l'aquitaunce.

Thomas de Valentyn porta son bref de meen vers le Priour de C. et counta q'atort etc. par la resoun[2] q'il tient de luy certeynz tenementz par homage et fealté et par les[3] services de x souz etc. la vynt W. le fiz Warynt, et luy demaunda homage et escuage etc.

Malm. Pur qi homage estes vous destreint ?

Denom. Pur vostre homage.

Malm. Quei avetz del aquitaunce ?

Denom. Seysi de nostre homage et de nos autres services ; et vous et vos auncestres nous ount aquité et nos auncestres du temps etc.

Malm. Nous dioms q'il tient de nous un mies[4] etc. en W. etc. par[5] ceux services q'il ad dit et par autres services, nomement etc. par quei[6] primes seioms a un des services.

[1] From *B* collated with *G* and *M*. [2] *Om.* q'atort . . . resoun *M*. [3] *Om.* par les *M*. [4] *Ins.* et un carué de terre *M*. [5] pur *B*. [6] *Om.* par quei *G*, *M*.

Translation of the Record—*continued.*

by John of Cowele the attorney of him the said Nicholas and likewise the jurors chosen by the consent of the parties who say upon their oath that the aforesaid Amy the grandmother of the aforesaid Nicholas, whose heir he is, while she was sole enfeoffed the aforesaid Amy the mother of the aforesaid Edmond, whose heir he is, of the aforesaid tenements and bound herself and her heirs to acquit the aforesaid Amy the mother of the aforesaid Edmond against whomsoever [etc.], and that the ancestors of him the said Nicholas have always from the time of the feoffment aforesaid acquitted this Amy the mother of the aforesaid Edmond and also Edmond himself till now when the aforesaid Nicholas has refused to acquit him to the damage of him the said Edmond of ten pounds.

Therefore it is awarded that the aforesaid Nicholas acquit the aforesaid Edmond against the aforesaid Henry de Percy of the aforesaid services for the aforesaid tenements and that the same Edmond recover against the aforesaid Nicholas his damages aforesaid; and that the same Nicholas be in mercy.

And upon this the same Edmond elected that all the goods and chattels of the aforesaid Nicholas except oxen and plough horses etc. be delivered to him and likewise a moiety of his lands and tenements etc. to hold etc. until the damages aforesaid be levied therefrom. Therefore let him have a writ by the statute[1] etc. and in what manner etc. let him make known here on the quindene of Hilary.

Damages ten pounds, whereof to the clerks thirteen shillings and four pence.

23. WALCOTE *v.* THE ABBOT OF PERSHORE.

A writ of mesne, on which the defendant without acknowledging the acquittance said that the place where the plaintiff was distrained was not held of him.

Thomas of [Walcot] brought his writ of mesne against the [abbot] of [Pershore] and counted that wrongfully etc. for the reason that he held of [the abbot] certain tenements by homage and fealty and by the service of ten shillings etc., and that William fitz Waryn came and demanded from him homage and scutage etc.

Malberthorpe. For whose homage are you distrained?

Denham. For your homage.

Malberthorpe. What have you of the acquittance?

Denham. You are seised of our homage, and of our other services; and you and your [predecessors] have acquitted us and our ancestors from the time etc.

Malberthorpe. We say that he holds of us one messuage etc. in W. etc. by the services which he has mentioned, and by other services, namely etc. Therefore let us first be at one about the services.

[1] Stat. Westm. II. 13 Edw. I. c. 18.

Denom. Nous ne pledoms mye le droit des services ; eynz si vos services soient arrere pur quei[1] destreynt[2] etc.

Herle. Il tient de nous un mies une carué de terre en W. par les services qe nous avoms dit, et de ceo fasoms[3] protestacioun etc. et vous dioms qe nous tenoms ceo en chief du roy. Estre ceo si tient Thomas une vergée de terre de H. de P. ; et en cele terre fust il destreint. Jugement etc.

Scrop. Dounqe grauntez vous l'aquitaunce d'un mies etc.[4]

Herle. Nous vous dioms qe cele vergée de terre ou vous estes destreint si tenetz vous de H. de P. et de vostre purchace et pus le temps de memore si etc.[5] Jugement etc.

Denom. Taunt amounte qe nous ne sumes pas destreint par vostre defaute.

Stanton. Pernez les[6] auxi com il vous dounent.[7]

Scrop. Toux les tenementz qe nous tenoms en W. si tenoms de vous ; et nous et nos auncestres avoms tenu de vous et de vos predecessours du temps etc.,[8] prest etc.

Malm. Le lieu ou vous estes destreint n'est pas parcele de la terre qe vous tenetz de nous, eynz d'une vergé q'est del fee H. de P.

Denom. Qe le lieu ou nous fumes[9] destreint est parcele de la[10] terre qe nous tenoms de vous, prest etc.

Herle. Il covyent dire plus, c'est assavoir ' et nent del fee H. de P.'

Ber. Ne dit yl assetz, de puys q'il tend d'averrer etc. ? Quei ad il a faire de qi fee etc. ?

Et fust l'averement etc.[11]

The Record of the Case.

De Banco Rolls, 4 Edw. II., Trinity (No. 187), r. 237d., Worcestershire.

Abbas de Pershore summonitus fuit ad respondendum Thome de Walcote de placito quod acquietet ipsum de seruicio quod Willelmus le fiz Waryn ab eo exigit de libero tenemento quod de prefato abbate tenet in Walcote unde idem Abbas qui medius est inter eos eum acquietare debet etc. Et unde idem Thomas per Willelmum de Walcote attornatum suum dicit quod cum ipse teneat de predicto abbate unum messuagium et unam carucatam terre cum pertinenciis in predicta uilla per homagium fidelitatem et seruicium

[1] *Om.* pur quei *G*, *M*. [2] destr' *B*, *G*. *Om.* pur . . . destr' *M*. [3] fooms *G* ; fesoms *M*. [4] *Om.* etc. *Ins.* et de une carué de terre *M*. [5] *Om.* si etc. *G*, *M*. [6] le *M*. [7] dient *M*. [8] *Om.* etc. *B*, *G*. [9] sumes pleint d'estre *M*. [10] *Ins.* carué de *M*. [11] resceu *G*.

Denham. We are not pleading now on the right in the services; but on whether your services, for which we are distrained etc., are in arrear.

Herle. He holds of us a messuage and a carucate of land in W. by the services which we have mentioned and of that we make protest etc.; and we tell you that we hold these of the king in chief. Besides this Thomas holds a virgate of [William fitz Waryn]; and it is in this land that he was distrained. We ask judgment etc.

Scrope. Then you grant the acquittance of one messuage etc.

Herle. We tell you that you hold this virgate of land, where you are distrained, of [William fitz Waryn], and by your purchase; and since the time of legal memory etc. We ask judgment etc.

Denham. Tantamount to this, that we are not distrained for your default.

Stanton J. Take the words, as they give them.

Scrope. All the tenements which we hold in W., we hold of you; and we and our ancestors have held of you and your predecessors from the time etc. Ready etc.

Malberthorpe. The place where you were distrained is not parcel of the land which you hold of us, but of a virgate, which is of the fee of [William fitz Waryn].

Denham. That the place where we were distrained is parcel of the land which we hold of you, ready etc.

Herle. He must say more, namely, 'and not of the fee of [William fitz Waryn].'

Bereford C.J. Has he not said enough, seeing that he offers to aver etc.? What has he to do with whose fee it is etc.?

And the averment was [received] etc.

Translation of the Record.

For the reference, see opposite.

The Abbot of Pershore was summoned to answer Thomas of Walcote on a plea that he acquit him of the services which William le fiz Waryn demands from him for his free tenement which he holds of the aforesaid Abbot in Walcote whereof the same Abbot who is mesne between them ought to acquit him etc. And whereupon the same Thomas by William of Walcote his attorney says that (whereas he holds of the aforesaid Abbot one messuage and one carucate of land with the appurtenances in the aforesaid vill by

The Record of the Case—*continued.*

decem solidorum et redditus quatuor librarum piperis per annum pro omni seruicio per que seruicia idem abbas ipsum Thomam uersus quoscunque acquietare debeat etc., predictus Willelmus distrinxit ipsum Thomam in predictis tenementis exigendo ab eo quinque solidos de scutagio de predictis tenementis pro defectu acquietancie ipsius abbatis etc. Unde dicit quod deterioratus est et dampnum habet ad ualenciam uiginti librarum. Et inde producit sectam etc.

Et abbas per Ricardum de Bykerton' attornatum suum uenit et defendit uim et iniuriam quando etc. et petit sibi ostendi si quod factum speciale habeat per quod idem abbas ad acquietanciam predictam ligari debeat in hac parte etc.

Et Thomas dicit quod ipse tenet predicta tenementa de predicto abbate per predicta seruicia et idem abbas seisitus de seruicio ipsius Thome pro predictis tenementis et similiter omnes predecessores ipsius abbatis a tempore cuius non extat memoria seisiti fuerunt de seruicio predicti Thome et antecessorum suorum de eisdem tenementis etc. per que seruicia ipsi semper hucusque ipsum Thomam et antecessores suos uersus quoscunque acquietarunt et ea racione predictus abbas ipsum Thomam acquietare debet etc.

Et abbas dicit quod predictus Thomas tenet de eo predicta tenementa per predicta seruicia et preter illa per seruicium trium libratarum piperis et seruicium decem et octo denariorum reddendorum in festo sancti Egidii ad fabricam capelle de Alesberi et faciendi sectam ad curiam ipsius abbatis de Persore de tribus septimanis in tres septimanas etc. et dicit quo ad tenementa illa quod predictus Thomas non distringitur pro defectu acquietancie ipsius abbatis etc. Dicit reuera quod predictus Thomas preter predicta tenementa que tenet de ipso abbate idem Thomas tenet in eadem uilla unam uirgatam terre de feodo predicti Willelmi le fiz Waryn inmediate de eodem Willelmo in qua uirgata terre idem Thomas modo distringitur, et unde predictus abbas non est medius inter ipsum et predictum Willelmum et hoc paratus est uerificare etc. Unde petit iudicium etc.

Et Thomas dicit quod quicquid ipse tenet in predicta uilla tenet ipse de prefato abbate etc. et quod locus in quo predictus Willelmus ipsum distringit est parcella predictorum messuagii et carucate terre que ipse tenet de eodem abbate etc. et unde abbas est medius etc. et non alicuius alterius uirgate terre que ipse tenet de predicto Willelmo sicut predictus abbas dicit. Et hoc petit quod inquiratur per patriam. Et abbas similiter.

Ideo preceptum est uicecomiti quod uenire faciat hic in crastino sancti Martini xij etc. per quos etc. et qui nec etc. ad recognoscendum etc. quia tam etc.

Translation of the Record—*continued.*

homage fealty and the service of ten shillings and the rent of four pounds of pepper a year for all services, for which services the same Abbot ought to acquit him the said Thomas against all persons whomsoever etc.) the aforesaid William has distrained him the said Thomas in the aforesaid tenements demanding from him five shillings of scutage for the aforesaid tenements in default of the acquittance of him the said Abbot etc. Whereupon he says that he is the worse and has damage to the value of twenty pounds; and thereof he brings suit etc.

And the Abbot by Richard of Bykerton his attorney comes, and denies tort and force when etc. and asks that it may be shown to him what specialty the said Thomas has by which the same Abbot ought to be bound to the aforesaid acquittance in this behalf etc.

And Thomas says that he holds the aforesaid tenements of the aforesaid Abbot by the aforesaid services and the same Abbot is seised of the service of him the said Thomas for the aforesaid tenements; and likewise all the predecessors of him the said Abbot from a time whereof there is no memory were seised of the service of the aforesaid Thomas and his ancestors for the same tenements etc. for which services they have always heretofore acquitted him the said Thomas and his ancestors against all persons whomsoever, and for that reason the aforesaid Abbot ought to acquit him the said Thomas etc.

And the Abbot says that the aforesaid Thomas holds of him the aforesaid tenements by the aforesaid services, and besides them by the service of three pounds of pepper a year and the service of eighteen pence to be rendered on the feast of St. Giles for the fabric of the chapel of Alesborough,[1] and of doing suit to the Abbot's court of Pershore from three weeks to three weeks etc.; and he says as regards these tenements that the aforesaid Thomas is not distrained for default of acquittance by the same Abbot etc. He says that the truth is that besides the aforesaid tenements which he holds of him the said Abbot, the same Thomas holds in the same vill one virgate of land of the fee of the aforesaid William le fiz Waryn immediately of the same William in which virgate of land the same Thomas is now distrained; and whereof the aforesaid Abbot is not the mesne between him and the aforesaid William, and this he is ready to aver etc.; whereupon he asks judgment etc.

And Thomas says that whatever he holds in the aforesaid vill he holds of the aforesaid Abbot etc. and that the place in which the aforesaid William distrains him is parcel of the aforesaid messuage and carucate of land which he holds of the same Abbot etc., and wherein the same Abbot is mesne etc., and is not parcel of any other virgate of land which he holds of the aforesaid William as the aforesaid Abbot says. And he asks that this may be inquired by the country and the Abbot likewise.

Therefore the sheriff is ordered that he cause to come here on the morrow of St. Martin twelve men etc., by whom etc. and who neither etc. to make recognition etc. because as well etc.

[1] This place is just outside Pershore on the road to Worcester.

24. BULE *v.* BAKER.

I.[1]

Nuper obiit : ou dereine seisine fut aleggé ; qar la seor qe fut tenaunt dit, qe après la mort le commune auncestre si entra un R. cum fiz et heir et seisi fut, et demaunda jugement du bref ; ou celi respons n'est pas agardé pur plein saunz dire ' et morust seisi ' et issint fut dit ; et alii qe il ne morust pas seisi. Set secus en le mortdauncestre.

Un Willem et Johanne sa femme porterent le *Nuper Obiit* devers A. soer Johanne et demaunda un mies etc. et counta qe R. son pere morust seisi en soun demene[2] etc. De R. descendi a J. et A. com a ij seors[3] et un heir etc. dount A. ad tut et J. n'ad rien etc.

Pass. Sire, la ou il portent cestuy bref de la morte R. lour auncestre,[4] nous vous dioms qe après la morte mesme cestuy R. si entra R. com fitz et heir mesme celuy R. et fut seisi. Et c'est un bref de possessioun et veot estre porté de la morte le drein seisi du sanke. Jugement du bref.

Hing. Ceste excepcion n'est pas assez pleyne en sey, saunz ceo q'il dient qe R. après la mort R. son pere entra com fiz et heir ; et fust seisi et murust seisi. Jugement.

Scrop. Assez nous suffit a dire q'il fut seisi saunz dire q'il[5] morust seisi[6] ; qe cestuy bref est doné en lieu de mort d'auncestre ; mès en le mortdauncestre ceo serreit bon response et[7] excepcion, et assez pleyne a dire ' après la mort etc. entra un tiel com fiz et heir, et fust seisi ' sanz dire q'il morust seisi etc.

Hunt.[8] Nent[9] semblable en le mortdauncestre et en cesti bref ; q'en le mortdauncestre[10] jeo vous grant bien cest excepcion estre assez pleyne sauntz dire q'il morust seisi, q'en le mortdauncestre si moun frere ou moy soimes[11] entré et aliene deynz age ou en prisoune ou de noun seyn memore et pus devye[12] saunz heir de son corps et jeo soy ousté de mon mortdauncestre[13] j'averoy mon recoverir par autre bref de possessioun de sa seisine com par l'entré[14] *dum non fuit compos mentis etc.* uel *infra etatem etc.* ou *dum fuit* [*infra*] *prisonam.* Et d'altre-part s'il soit disseisi et devie saunz issue et jeo soy osté del[15] mort

[1] From *B* collated with *G*, *M* and *R*. The headnote is from *G*. [2] *Om.* en soun demene *G*, *M*, *R*. *Ins.* nent guers *G*, n'adgers *M*, ne gers *R*. [3] filles *M*. [4] pere *G*, *M*, piere *R*. [5] *Om.* fut . . . q'il *M*. [6] *Ins.* Et ceo moustre jeo *M*. [7] *Om.* response et *G*, *M*, *R*. [8] *Ing. R*. [9] N'est pas *G*, *M*, *R*. [10] *Ins.* si *M*. [11] seit *G*, soit *M*, *R*. [12] deyve *R*. [13] *Ins.* par excepcion de dreyn seisi *M*. [14] *For* de sa . . . l'entré *subs.* ou d'entré *M*. [15] par le *B*, *G*.

24. BULE *v.* BAKER.[1]

I.

Nuper obiit. Last seisin was alleged; for the sister who was tenant said that after the death of the common ancestor one R. entered as son and heir and was seised. She asked judgment of the writ. This answer was awarded to be incomplete without her saying 'and died seised'; and so this was said. The others replied that he did not die seised. It would be otherwise in a mortdancestor.

One [John and Margery] his wife brought the *nuper obiit* against [Joan] the sister of [Margery], and demanded a messuage etc. and counted that Richard her father died seised in his demesne etc. From Richard descended [etc.] to [Margery and Joan] as to two sisters and one heir etc., whereof [Joan] has all and [Margery] nothing etc.

Passeley. Sir, whereas they bring this writ on the death of Richard their ancestor, we tell you that after the death of this same Richard there entered another Richard as son and heir of this same Richard and he was seised. And this is a writ of possession and should be brought on the death of the last person of the same blood who was seised. We ask judgment of the writ.

Hengham. This exception is not of itself sufficiently full without their saying that Richard after the death of Richard his father entered as son and heir and was seised and died seised. We ask judgment.

Scrope. It is sufficient for us to say that he was seised without saying that he died seised; for this writ is given in place of a mortdancestor. But in the mortdancestor this would be a good answer and exception, and it would be sufficiently full to say 'after the death etc. such a person entered as son and heir and was seised' without saying that he died seised etc.

Huntingdon. The mortdancestor and this writ are not alike. In the mortdancestor I well grant you that this exception is full enough without saying that he died seised; for in the mortdancestor, if my brother entered[2] and alienated [while I was] within age or in prison, or of unsound mind, and then he died without an heir of his body, and I were ousted from my mortdancestor by the exception of 'last seised,' I should have my recovery by another writ of possession on his seisin as by the writ of entry *dum non fuit compos mentis,* or *infra etatem,* or *dum fuit infra prisonam.* Besides if he were disseised and died without issue, and I were ousted from the mortdancestor by

[1] This is *Fitz.* Book ii. fol. 126 v°, *Nuper obiit,* No. 6.

[2] The text is corrupt here. The words 'ou moy' are intrusive, and 'soimes' seems to be an error for 'soit' which occurs in *M* and *R*.

dauncestre par sa seisine j'averoy bref d'entré sure la disseisine[1] et toux sount brefs de possessioun coment q'ils sount colourez de dreit; ou il[2] soit[3] aliené de pleyn age hors de prison[4] de seine[5] memore etc., la su jeo barré; et issint sount ceux[6] brefs de possessioun issi qe si jeo soy ousté del mortdauncestre par ceste excepcion de drein seisi si averay jeo altre bref de possessioun *ut supra*.[7] Issint n'est il mye en le *Nuper obiit* qe si vous moy oustez de cestuy bref par ceste excepcion jeo n'ay nul recoverir par nul autre bref de possessioun, mès moy chace[8] a moun bref de dreit de renable partie qe serreit meschief, qe nous n'avoms autre recoverir sinoun par un des ij brefs; par quei[9] jugement si vous nous puissez oster de cestuy bref de possessioun par cel excepcion qe n'est pas pleyne en soy, einz nent[10] sufficient, saunz ceo qe vous nous puissetz[11] doner autre bref et[12] assez bon.

Ber. Donez lui autre bref.

Scrop. Ceo n'avoms mestir etc.

Ber. Si vous luy vollez ouster de cesti bref de possessioun ne avez mye mestir de luy doner autre bref ? (*quasi diceret*, Sic).

Scrop.[13] Si semble il a nous.

Ber.[14] Donqe ne luy oustrez[15] de cesti bref saunz ceo qe vous ne luy donez autre.

Scrop.[16] Sire, vous deissez bien si ceo fut en un bref d'entré et nous deissoms qe nous n'avoms entré[17] par cestuy etc. le bref ne s'abateroit mye saunz dire par qi,[18] et issi luy doner[19] bon bref del entré celuy; auxi en ceo[20] cas de noun tenure saunz ceo qe jeo luy troeve tenaunt le bref ne s'abateroit mye et issi luy doner[19] bon bref vers le tenaunt; mès en le bref ou nous sumes ore nous n'avoms pas veu qe par excepcion de drein seisi, le bref ne s'abateroit mye saunz doner autre bref.

Ber. Vous n'abaterez jammes[21] saunz doner autre.

Scrop.[22] Et nous luy durroms bref de dreit[23] de renable partie.

Ber. Vous luy dorretz bref de dreit, la ou bref de possessioun luy servyreit,[24] (*quasi diceret*, Noun[25]). Et[26] vous di plus outre[27] qe par ceste excepcion qe vous avez doné jammes ne luy oustrez de ceo bref en la manere com vous la donetz.[28]

[1] seisine *B*, *G*, disseisine *R*. [2] s'il *R*. [3] eit *M*. *Om.* soit *R*. [4] *Ins.* et *M*. [5] bone *M*. [6] ceux *B*, touz *G*, *R*. [7] *Om.* ut supra *R*. [8] chacerez *M*. [9] *Ins.* nous demaundoms *G*, *M*, *R*. [10] *Om.* nent *M*. [11] *Om.* puissetz doner, *Ins.* donez *R*. [12] *Om.* et *M*. [13] *Ins.* Non dieu *M*. [14] *Om. Ber. B. Ins.* Non dieu *M*. [15] *Ins.* my *G*. [16] *Om. Scrop B*. [17] n'entrames mie *R*. [18] *Om.* par quei, *Ins.* einz par un tiel *M*. [19] doune jeo *M*. [20] *Om.* ceo *M*, *R*. [21] *Ins.* ceo bref *G*, *M*. [22] *Denum R*. [23] ' dreit ' on correction from ' d'entré ' *B*. [24] gist *M*. [25] *Ins.* frez *M*. [26] *Ins.* jeo *M*. [27] *Om.* outre *G*, *M*, *R*. [28] *For* com . . . donetz *subs.* qe vous l'avez usé *M*.

reason of his seisin, I should have a writ of entry *sur disseisine*; and all these are writs of possession, although they are coloured in the right; and there where he has alienated when I was of full age, out of prison and of sound mind etc., I am barred [from the mortdancestor]; and so there are such writs of possession, that if I be ousted from the mortdancestor by this exception of last seisin, I should have another writ of possession (as above). It is not so in the *nuper obiit*; for if you oust me from that writ by this exception I shall have no recovery by any other writ of possession; but you will drive me to my writ *de racionabili parte*[1]; and this would be a hardship, for we have no other recovery, save by one of these two writs. Therefore we ask judgment whether you can oust us from this writ of possession by this exception which is not complete in itself, and is not sufficient without your giving us another writ which is good enough.

Bereford C.J. Give him another writ.

Scrope. That we have no need to do etc.

Bereford C.J. If you wish to oust him from this writ of possession, are you not bound to give him another writ? (*as if to say*, Yes).

Scrope. It seems to us [that we need not].

Bereford C.J. Then [we tell you that] you will not oust him from this writ without giving him another.

Scrope. Sir, you would be right, if this were in a writ of entry, and we said that we had not entry by this man etc., for then the writ would not be abated without our saying by whom we entered, and so giving him a good writ of entry; similarly in a case of non-tenure the writ would not be abated without my finding him a tenant, and so giving him a good writ against the tenant; but in the writ on which we are now pleading we have never seen that by an exception of 'last seised' the writ would not be abated unless the demandant were given another writ.

Bereford C.J. You will never abate this writ without giving him another.

Scrope. We will give him a writ of right *de racionabili parte*.

Bereford C.J. You will give him a writ of right where a writ of possession would serve him! (*as if to say*, No). And I tell you further, that you will never oust him from this writ by this exception which you have given, in the way in which you give it.

[1] This was a writ of right in which the proceedings were often much protracted.

Hunt., Scrop et les autres isserent d'emparler, revyndrent[1] et disoient qe R. entra après la morte R. lour pere com fiz et heir et murust seisi, prest etc. Et c'est un bref de possessioun. Jugement etc.

Hing. La ou il dient qe R. entra après la morte R. son pere et murust seisi, q'il ne murust pas seisi, prest etc.

Et alii contrarium.

II.[2]

Nuper obiit : ou fut dit qe excepcion de dreyn seisi ne chiet pas en abatement du bref, a dire q'il avoyt un tel fiz le comune auncestre seisi pus la mort l'auncestre saunz ceo q'il dit q'il morust seisi etc.

Johan Bole e Margerie sa femme porteront bref de *Nuper Obiit* de renable partie vers un A. e Johane sa femme e demanderont lour resnable partie de certeinz tenemenz.

Scrop. La ou eux demandont lour resnable departie e contont de la seisine Richard, descendant a eux, la vous dioms nous qe après la mort Richard entra Richard[3] fuitz e heir, e fust seisi, e c'est un bref de possession qe voet estre porté de la mort le dereyn seisi. E demandoms jugement du bref.

Cant. Ne nous put il ouster[4] de cesti bref, qe c'est un *nuper obiit* qe chiet entre privetz du saunke ou nous affermoms lour estat estre descendu de mesme l'auncestre; e excepcion de dereyn seisi ouste[5] un bref de possession et done[6] autre; e s'il nous[7] ousteroit de cesti bref par ceste excepcion qe Richard fu seisi sanz plus dire nous serroms ousté de chescune manere de bref de possession. E demandoms jugement.

Denum. En assise de mortdauncestre ceo serreit assez[8] a dire qe après la mort l'auncestre de qi mort vous portez ceste assise, si[9] entra un tiel com fuitz e heir e fut plus tardif[10] seisi[11] e demandoms jugement du bref.

West. De rens semblable, qe mortdauncestre git entre estranges, en quel cas, si excepcion de dreyn seisi seit allegé e soit ousté de cel bref, il poet vers l'estrange aver bref d'entré ou autre bref acordant a son cas ; mais en ceo cas il ne pount aver nul tiel remedy qe lour

[1] *Om.* revyndrent *M.* [2] From *D* collated with *P.* The headnote is from *P.* [3] *Ins.* soun fiz cum *P.* [4] For Ne . . . ouster *subs.* Par taunt ne devoms estre ousté *P.* [5] *Ins.* la partie de *P.* [6] *Ins.* un *P.* [7] vous *D.* [8] *For* ceo serreit assez *subs.* c'est bon respounse en abatement du bref *P.* [9] *Om.* après . . . si *P.* [10] tard *P.* [11] *Ins.* saunz dire q'il morust seisi, *ita hic P.*

Huntingdon, Scrope and the others went out to imparl. They returned and said that Richard entered after the death of Richard their father as son and heir, and died seised, ready etc. And this is a writ of possession. We ask judgment etc.

Hengham. Whereas they say that Richard entered after the death of Richard his father and died seised, we say that he did not die seised. Ready etc.

And the others to the contrary.

II.

Nuper obiit. It was said that the exception of ' last seised,' that is to say that there was a son of the common ancestor who was seised after the death of the ancestor, does not lie in abatement of the writ unless the exception says that he died seised etc.

John Bule and Margery his wife brought their writ of *nuper obiit* against [B.] and Joan his wife, and demanded their rightful share of certain tenements.

Scrope. There where they demand their rightful share and count of the seisin of Richard, with descent to them, there we tell you that after the death of Richard, Richard his son and heir entered and was seised. And this is a writ of possession, which ought to be brought on the death of the last person seised. We ask judgment of the writ.

Cambridge. He cannot oust us from this writ ; for this is a *nuper obiit* which lies between privies in blood, and by it we declare our estate to be descended from the same ancestor. The exception of ' last seised ' ousts a party from a writ of possession, and gives him another writ. If he were to oust us from this writ by this exception that Richard was seised without saying more, we should be ousted from every kind of writ of possession. We ask judgment.

Denham. In[1] an assize of mortdancestor it would be a good answer in abatement of the writ to say that after the death of the ancestor on whose death you are bringing this assize a certain person entered as son and heir, and was recently seised without saying that he died seised. So in this case. We ask judgment of the writ.

Westcote. There is no similarity here ; for the mortdancestor lies between strangers ; and in that case if an exception of ' last seised ' is alleged and the plaintiff be ousted from that writ, he can have against a stranger a writ of entry or another writ to suit his case; but in this case he cannot have such a remedy, for the plaintiff's estate is

[1] The translation of this speech follows *P.*

estat est dependant de un mesme auncestre en quel cas[1] ne gist autre remedie si non bref de renable partie.

Ber. Meschief serroit de eux ouster de[2] bref de possession e lour chacer a bref de dreit en ceo cas ou bref de possession gist. En quel cas git le bref de[3] dreit de renable partie et bref de *nuper obiit* ?

Scrop. Bref de dreit de renable partie gist en cas quant le dereyn auncestre ne murust pas seisi e le *nuper obiit*[4] quant il est seisi.

Ber. Ja ne voille dieu qe vous avez bref de dreit a demander *racionabilem partem de racionabili parte.*

Scrop. Si ad[5] en l'un cas e en l'autre tiel bref e demandoms jugement.

Ber. Pur quanqe vous avetz unqore dit, le bref est assez bon.

Denum. Sire, nous vous dioms qe Richard le fuitz murust seisi.

Cant. Le reverse etc.

The Record of the Case.

De Banco Rolls, 4 Edw. II., Trinity (No. 187), r. 203, Southampton.

Iohannes le Bul et Margeria uxor eius per Ricardum le Blund attornatum suum petit uersus Benedictum le Baker de Aston' et Iohannam uxorem eius medietatem unius messuagii sexaginta acrarum terre et duarum acrarum prati cum pertinenciis in Aston' ut ius et racionabilem partem ipsius Margerie que eam contingit de hereditate que fuit Ricardi le Trewe patris predictarum Iohanne et Margerie cuius heredes ipse sunt et qui nuper obiit etc. Et unde iidem Iohannes et Margeria dicunt quod predictus Ricardus pater etc. fuit seisitus de integro predictorum tenementorum etc. ut de feodo et iure tempore pacis tempore domini Edwardi patris domini regis nunc capiendo inde explecia ad ualenciam etc. Et inde obiit seisitus etc. Et de ipso Ricardo descendit ius etc. istis Iohanne et Margerie ut filiabus et heredibus etc. unde predicti Benedictus et Iohanna totum tenent et racionabilem partem ipsius Margerie eisdem Iohanni et Margerie deforciant etc. Et inde producunt sectam etc.

Et Benedictus et Iohanna per Stephanum le Orfeure attornatum suum ueniunt et defendunt ius suum quando etc. Et dicunt quod non debent eis inde ad hoc breue *nuper obiit* de morte predicti patris etc. respondere; quia dicunt quod huiusmodi breue *nuper obiit* habet ferri de morte communis antecessoris qui ultimo obiit seisitus etc. Et dicunt quod post mortem predicti Ricardi patris etc. quidam Ricardus filius et heres eiusdem Ricardi patris intrauit in predictis tenementis etc. et inde obiit seisitus in dominico suo ut de feodo etc. Et hoc paratus est uerificare etc. Vnde petunt iudicium etc.

[1] *Om.* il ne . . . cas *P.* [2] *Ins.* ceo *P.* [3] *Om.* de *D.* [4] *Om. Scrop.* Bref . . . nuper obiit *P.* [5] *Ins.* il *P.*

dependent on one and the same ancestor as the tenant's, and here there lies no other remedy save a writ *de racionabili parte*.

Bereford C.J. It would be a hardship to oust them from their writ of possession and drive them to their writ of right in this case where a writ of possession lies. In what case does the writ of right *de racionabili parte* and in what the writ of *nuper obiit* lie?

Scrope. The writ of right *de racionabili parte* lies in a case where the last ancestor did not die seised, and the *nuper obiit* where he died seised.

Bereford C.J. God forbid that you have a writ of right to demand rightful share of a rightful share.

Scrope. He has such a writ in both cases. We ask judgment.

Bereford C.J. In spite of all you have said the writ is sufficiently good.

Denham. Sir, we say that Richard the son died seised.

Cambridge. The reverse etc.

Translation of the Record.

For the reference, see opposite.

John le Bul and Margery his wife by Richard le Blund their attorney demand against Benedict le Baker of Easton and Joan his wife a moiety of one messuage sixty acres of land and two acres of meadow in Easton as the right and lawful share of her the said Margery which falls to her of the inheritance which belonged to Richard le Trewe father of the aforesaid Joan and Margery whose heiresses they are and who died recently etc. And whereupon the same John and Margery say that the aforesaid Richard the father etc. was seised of the entirety of the aforesaid tenements etc. as of fee and right in time of peace in the time of Edw. I., taking the profits thereof to the value etc. and thereof died seised etc. And from him the said Richard descended the right etc. to these Joan and Margery as daughters and heiresses etc. whereof the aforesaid Benedict and Joan hold all and deforce the lawful share of her the said Margery from the same John and Margery etc.; and thereof they bring suit etc.

And Benedict and Joan by Stephen le Orfevre their attorney come and deny Margery's right when etc. and they say that they ought not to answer them thereof on this writ of *nuper obiit* on the death of Richard the father etc.; because they say that such a writ of *nuper obiit* ought to be brought on the death of the common ancestor who last died seised etc. And they say that after the death of the aforesaid Richard the father etc. one Richard the son and heir of the same Richard the father entered into the aforesaid tenements etc. and thereof died seised in his demesne as of fee etc. And this he is ready to aver etc. Whereupon they ask judgment etc.

The Record of the Case—*continued.*

Et Iohannes et Margeria dicunt quod predictus Ricardus filius Ricardi non obiit seisitus de predictis tenementis sicut predicti Benedictus et Iohanna dicunt. Et hoc petunt quod inquiratur per patriam.

Et Benedictus et Iohanna similiter. Ideo preceptum est uicecomiti quod uenire faciat hic in crastino Animarum xij etc. per quos etc. et qui nec etc. ad recognoscendum etc. quia tam etc.

25. CARPENTER *v.* CARPENTER.[1]

Heritage descendi a v soers. La une devia, et avoit issue ; ij de les autres soers entrerent en l'entier. Les autres ij et l'issue la quinte porterent le *nuper obiit* vers les autres deux. L'issue est noun suy. Les ij furent severez par agarde. Et les ij counterent vers les autres ij qe atort lour deforcent lour ij quinte partie de une carué de terre. Et la courte les chacea dire les ij parties de v parties de une carué de terre ; set quorundam oppinio fuit contra. Et pus respoundu fut qe lour auncestre ne murust pas seisi. Et alii econtra.

Nec habuit uisum.

The Record of the Case.

De Banco Rolls, 4 Edw. II., Trinity (No. 187), r. 186d., Leicestershire.

Alicia filia Ricardi le Carpenter de Sproxton' et Matillis soror eiusdem Alicie per attornatum suum petunt uersus Emmam filiam Ricardi le Carpenter et Albredam sororem eiusdem Emme duas partes quinque parcium unius messuagii et unius uirgate terre cum pertinenciis in Sproxton' ut ius et racionabilem partem ipsarum Alicie et Matillidis que eas contingit de hereditate que fuit Ricardi le Charpenter de Sproxton' patris ipsarum Alicie et Matillidis et Emme filie Ricardi le Charpenter et Albrede et aui cuiusdam Emme filie Agnetis filie Ricardi le Charpenter cuius heredes ipse sunt et qui nuper obiit etc. Et unde dicunt quod predictus Ricardus communis antecessor etc. fuit seisitus de integro predictorum tenementorum cum pertinenciis in dominico suo ut de feodo et iure tempore regis Edwardi patris domini regis nunc capiendo inde explecia ad ualenciam etc. et nuper inde obiit seisitus etc. Et de ipso Ricardo descendit ius etc. predictis Alicie

[1] From *M* (fol. 45 v°).

Translation of the Record—*continued.*

And John and Margery say that the aforesaid Richard the son of Richard did not die seised of the aforesaid tenements as the aforesaid Benedict and Joan say; and they ask that this may be inquired by the country.

And Benedict and Joan likewise. Therefore the sheriff is ordered to cause to come here on the morrow of All Souls twelve etc. by whom etc. and who neither etc. to make recognition etc. because as well etc.

25. CARPENTER *v.* CARPENTER.[1]

An inheritance descended to five sisters. One died and had issue. Two of the other sisters entered into the entirety. The other two and the issue of the fifth brought the *nuper obiit* against the two who had entered. The issue was non-suited. The two others were severed by award. They counted against the other two that wrongly did they deforce them of their two fifth parts of one carucate of land. The court drove them to say 'two parts of five parts[2] of one carucate of land'; but the opinion of certain persons was contrary to this. And then it was answered that their ancestor did not die seised. And the others to the contrary.

They had no view.

Translation of the Record.

For the reference, see opposite.

Alice the daughter of Richard le Carpenter of Sproxton and Maud the sister of the same Alice by their attorney demand against Emma the daughter of Richard le Carpenter and Aubrey the sister of the same Emma two parts of five parts of a messuage and a virgate of land with its appurtenances in Sproxton as the right and the rightful share of them the said Alice and Maud, which falls to them of the inheritance of Richard le Carpenter of Sproxton the father of them the said Alice and Maud and Emma the daughter of Richard le Charpenter and the grandfather of one Emma the daughter of Agnes the daughter of Richard le Charpenter, whose heiresses they are, and who died recently etc. And whereupon they say that the aforesaid Richard the common ancestor etc. was seised of the entirety of the aforesaid tenements with the appurtenances in his demesne as of fee and of right in the time of king Edward the father of the lord king who now is, taking thereof the profits to the value etc. and thereof he recently died seised etc. And from the same Richard descended the right etc. to the aforesaid Alice,

[1] This brief account of the proceedings in court is followed in the manuscript by a bad copy of the Record. This, however, is here printed below, not from the copy in the manuscript, but from the Plea Roll.

[2] In spite of this being the point of these proceedings, the copy of the Record in the manuscript omits the words *quinque parcium* which appear in the original enrolment. It may also be noticed that the subject of the litigation was not a carucate of land, but a messuage and a virgate.

The Record of the Case—*continued.*

Matillidi [et] Emme filie Ricardi et Albrede et cuidam Agneti ut filiabus et heredibus etc. et de ipsa Agnete descendit ius propartis sue predicte Emme filie Agnetis que non sequitur etc. ut filie et heredi etc. que quidem Emma filia Ricardi et Albreda totum tenent etc. et predictis Alicie et Matillidi racionabilem partem inde deforciant etc. Et inde producunt sectam etc.

Et sciendum quod quinta pars etc. excipitur eo quod predicta Emma filia Agnetis alias summonita fuit ad sequendum simul etc. que non sequebatur etc. per quod consideratum fuit quod predicte Alicia et Matillis sequerentur sine etc.

Et predicte Emma filia Ricardi et Albreda per attornatum suum ueniunt et defendunt ius suum quando etc. et bene defendunt quod predictus Ricardus communis antecessor etc. non obiit seisitus de predictis tenementis cum pertinenciis in dominico suo ut de feodo etc. Et de hoc ponunt se super patriam etc. Et predicte Alicie et Matillis similiter etc.

Ideo preceptum est uicecomiti quod uenire faciat hic in crastino sancti Martini xij etc. per quos etc. et qui nec etc. ad recognoscendum etc. quia tam etc.

Postea a die sancti Hillarii in xv dies anno domini regis nunc sexto ueniunt partes predicte per attornatos suos et similiter iuratores de consensu parcium electi, qui dicunt super sacramentum suum quod predictus Ricardus pater predictarum Alicie et Matillidis non obiit seisitus de predictis tenementis. Ideo consideratum est quod predicte Emma et Albreda eant inde sine die. Et predicte Alicia et Matillis nichil capiant per iuratam istam set sint in misericordia pro falso clamore etc.

26. STANTON *v.* THE PRIOR OF MONMOUTH.

I.[1]

Quare Impedit ou le pleyntif prist son title del presentement son besael, e le destourbour allega iiij presentements chescun après autre ; a quei le pleintif fut chacé a respondre a trestouz, e dit qe l'un son piere en temps de ceux presentements fut dens age etc. e pus le destourbour fu resceu a pleder al estat le pleintif, en weyvant son primer response, et dit qe son besael ne presenta unqes. *Et sic ad patriam.*

Johan de Stanton porta son *quare impedit* vers le priour de Monenwe e conta qe atort lui desturba e pas ne lui soefre presenter covenable persone a la eglise de Staunton etc. E dit qe a lui appent etc. par la resoun qe un F. son besael presenta a mesme cele eglise un

[1] From *D* collated with *T*. The headnote here printed is from *D*.

Translation of the Record—*continued.*

Maud, Emma the daughter of Richard, and Aubrey and one Agnes as daughters and heiresses etc.; and from her the said Agnes descended the right of her share to the aforesaid Emma the daughter of Agnes, who sues not etc., as daughter and heiress etc. And this Emma the daughter of Richard and this Aubrey hold all etc. and deforce the aforesaid Alice and Maud of their rightful share etc. And thereof they bring suit etc.

And be it known that the fifth part etc. is excepted on the ground that the aforesaid Emma the daughter of Agnes was heretofore summoned to sue together etc. and she sued not etc.; and for this it was awarded that the aforesaid Alice and Maud should sue without her etc.

And the aforesaid Emma the daughter of Richard and Aubrey come by their attorney and deny the demandants' right when etc. and well they deny that the aforesaid Richard the common ancestor etc. died seised of the aforesaid tenements with the appurtenances in his demesne as of fee etc. And of this they put themselves upon the country etc. And the aforesaid Alice and Maud likewise etc.

Therefore the sheriff is ordered to cause to come here on the morrow of St. Martin twelve etc., by whom etc. and who neither etc. to make recognition etc. because as well etc.

Afterwards on the quindene of St. Hilary in the sixth year of the lord king who now is, the aforesaid parties came by their attorneys and likewise the jurors chosen by the consent of the parties, who say upon their oath that the aforesaid Richard the father of the aforesaid Alice and Maud did not die seised of the aforesaid tenements. Therefore it is awarded that the aforesaid Emma and Aubrey go thereof without day; and that the aforesaid Alice and Maud take nothing by this jury, but be in mercy for a false claim etc.

26. STANTON *v.* THE PRIOR OF MONMOUTH.

I.

A *quare impedit* in which the plaintiff took his title from the presentation of his great-grandfather; and the disturbant alleged four presentations one after the other. On this the plaintiff was driven to reply to them all, and said that his father at the time of those presentations was within age etc.; and then the disturbant was admitted to plead to the estate of the plaintiff in waiver of his first answer; and he said that the plaintiff's great-grandfather never presented. And so to the country.

John of Stanton brought his *quare impedit* against the prior of Monmouth and counted that the prior disturbed him wrongfully and suffered him not to present a fit parson to the church of Stanton etc. And he said that it belonged to him to present etc. for the reason that one [Richard] his great-grandfather presented to this same church one

son clerk etc. qe a son presentement fu resceu etc. par qi morte la eglise est ore voide. E fit sa descente linealment tanqe a lui etc.

Scrop. Sire, la ou Johan de S. porte ceo *quare impedit* vers le priour de M. e ad conté de un presentement faite par son besael qe a cele eglise presenta un son clerk B. par noun etc. par qi morte la eglise est ore voide, Sire, la vous dioms qe un S. nostre predecessour a la eglise avandite si presenta le derrein persone, *uidelicet* un Johan par noun, par qi mort l'eglise est ore voide: A. nostre prochein predecessour avaunt S. auxi si presenta[1] etc. un Johan qi a son presentement fu resceu e institut de evesqe e murust persone e empersoné (E issi allega iiij presentementz par ses predecessours chescun après autre). E demaundoms jugement du bref.

Mal. Sire, la ou le priour dit qe un S. son predecessour[2] presenta la dareyne persone, Sire, cel presentement grever nous ne deit, qar en temps de cel presentement si esteioms denz age, e prest etc.

Scrop. Quei responetz en dreit des autres presentementz?

Mal. Vous allegez un dereyn presentement com en abatement de nostre accion par cesti bref de possession, a quel presentement nous avoms respondu, par quei il semble qe nous avoms assetz dit etc.

Scrop. Nous avoms apris, mesqe nous ussoms allegé x presentementz etc. il covendra qe vous respondisetz a toutz; e pus nous eslirrioms a quel presentement nous vodrioms estre a issu,[3] qar le issu[4] se prendra sur le presentement de un (*ut uidebatur termino Michaelis ultimo*).

Toud. Vous estes homme de religion, il vous covent mustrer ascun title de dreit coment vous estes avenutz e del hure qe vous ne moustrez fors une possession,[5] la quele nous avoms defait *ut supra*; par quei a tele persone com vous estes assetz avoms respondu. (*Hoc non obstante*[6] furent chacez a respondre[7] a toutz etc.)

Mal. Quant al dereyn presentement q'il allegont si dioms *ut supra*, e quant al procheyn presentement avant si dioms qe grever ne nous deit, qar a tele hure etc. nostre pere, qi heir nous sumes, si esteit denz age e quant as autres deux presentement en avant,[8] si dioms q'il ne furent unqes[9] presentez, ne institutz de evesqe etc. Prest etc.

[1] *Om.* le derrein . . . presenta *D.* [2] *Ins.* si *T.* [3] issi *T.* [4] *Om.* qar le issu *T.* [5] So in both MSS. [6] *Ins.* il *T.* [7] *Ins.* outre *T.* [8] *Om.* si dioms . . . avant *T.* [9] donqes *T.*

[Philip] his clerk etc. who on his presentation was admitted etc., and by the death of this clerk the church is now void. And John made his descent lineally to himself etc.

Scrope. Sir, whereas John of Stanton brings this *quare impedit* against the prior of Monmouth and has counted of a presentation made by his great-grandfather, who presented to this church one his clerk [Philip] by name etc. by whose death the church is now void, we tell you that one S. our predecessor presented to the church aforesaid the last parson, to wit, one John by name, by whose death the church is now void; A. our next predecessor before S. also presented etc. one John who on his presentation was admitted and instituted by the bishop and died parson and 'imparsonated.' (And thus he alleged four presentations in succession by his predecessors.) We ask judgment of the writ.

Malberthorpe. Sir, whereas the prior says that one S. his predecessor presented the last parson, we say that that presentation ought not to harm us, for at the time of that presentation we were within age. Ready etc.

Scrope. What answer do you make with regard to the other presentations?

Malberthorpe. You allege a last presentation in abatement of our action by this possessory writ and to this presentation we have answered. Therefore it seems that we have said enough etc.

Scrope. We have understood that even if we had alleged ten presentations etc. it would be necessary for you to answer them all. Then we would choose on which presentation we would be at issue, for the issue is taken on the presentation of one (as was seen in Michaelmas term last[1]).

Toudeby. You are a man of religion; you must show some title in the right, how you came [to these presentations], and since you show us only possession,[2] which we have defeated (as above), therefore to a parson such as you are we have answered sufficiently. (This notwithstanding they were driven to answer all the presentations etc.)

Malberthorpe. As to the last presentation which they allege, we say (as above), and as to the next presentation before that, we say that this should not harm us, for at that time etc. our father, whose heir we are, was within age. As to the other two presentations before these, we say that the clerks were never presented, nor were they instituted by the bishop etc. Ready etc.

[1] See vol. iv. p. 51, and p. 18, note 1 above.

[2] The words 'une possession' in the MSS may be an error for 'une title de possession.'

West. Sire, la ou il dïont qe a eux[1] etc. par la resoun qe un F. le besael presenta un son clerke etc. Sire, nous vous dioms qe F. ne presenta unqes etc. Prest etc.

Herle. A ceo ne poetz avenir, qar vous avez allegé les presentementz de voz predecessours com en barre de nostre accioun par cesti bref, as queux presentementz nous avoms respondu. Jugement si a autres responses poetz resortir.

Scrop. Respons doné,[2] e qe chiet en abatement de bref, ne toudra[3] respons qe chiet al accioun ; mès ceo qe nous deyms adonqe si fust al bref, e ore sumes al accion. Jugement.

Toud. Vous alleggez iiij presentementz etc. e le meyndre de iiij si est peremptorie a nous barrer[4] de cesti bref de possession a touz jours. Et del hure qe vous avez allegé un response peremptorie etc. jugement si a autre peremptorie response[5] pussez resortir. Et d'autrepart vous deistes qe vos predecessours ount presenté iiij foitz chescun *inmediate* après autre, e la avoms dit q'il ne presenterent qe ij foitz, prest etc. e les queux deux presentementz ne nous deivent grever, por ceo qe nostre pere e nous al hure esteioms deinz age et issi par reson devrioms prendre issu sur ceo qe vous meismes nous avetz doné. E demaundoms jugement si a pleder ore al estat nostre auncestre devez estre resceu.

Ber. Vous lui avetz conu le dreyn presentement ; coment qe ceo soit del age etc. il plede ore a vostre title. Pur quei ne deit il a ceo estre resceu ?

Fr. S'il ust dit al commencement qe nostre besael ne presenta unqes etc. ja ne serreit il après resceu a alleger presentement de ses predecessours, donqe del hure q'il ad a[6] commencement pledé al estat ses predecessours, nent plus ne puet il[7] resortir a pleder al estat noz auncestres.

Scrop (Justice). Plee n'est ja a issue tanqe les parties sur lour respons eient demurrez, qe par la demure de partie, si est l'issue de[8] court affermé. Mais ore ne voillent il sur cel respons demurrer, eynz le unt weivé e pledont a vostre title, a quei il vous covent respondre.

Malm. Sire, il me semble q'il unt eu trop d'avantage del hure q'il ount moustré quant q'il unt pur eux en liaunt cest presentement en eaux,[9] q'il pount pleder a nostre estat, quant[10] lour estat[11] par nostre respons est defait. Estre ceo il n'ount unqore rens dit par ou il deyvent avoir bref al evesqe etc.

[1] *Ins.* appent *T.* [2] *Ins.* en court *T.* [3] tout pas *T.* [4] et barre *T.* [5] *Om.* response *T.* [6] au *T.* [7] *Ins.* ore *T.* [8] du *T.* [9] eux *T.* [10] *Ins.* a *T.* [11] *sic T*, est *D.*

Westcote. Sir, where they say that it belongs to them etc. for the reason that one [Richard] his great-grandfather presented one [Philip] his clerk etc. we say that [Richard] never presented etc. Ready etc.

Herle. To that you cannot come ; for you have alleged the presentations of your predecessors as a bar to our action by this writ ; and to these presentations we have answered. We ask judgment whether you can resort to other answers.

Scrope. An answer which has been given and is in abatement of the writ will not take away an answer which is to the action. What we said then was against the writ, and what we say now is against the action. We ask judgment.

Toudeby. You allege four presentations etc. and the least of the four is sufficiently peremptory to bar us from this writ of possession for ever. Since you have alleged one peremptory answer etc., we ask judgment whether you can resort to another peremptory answer. And besides you said that your predecessors have presented four times in immediate succession, and to that we have said that your predecessors [have] only presented twice, and ready were we etc. ; and that these two presentations ought not to harm us, because our father and we ourselves when they were made were within age ; and so by reason [of this] we ought to take issue upon the answer which you yourselves have given us. We ask judgment whether you should be received now to plead on the estate of our ancestor.

Bereford C.J. You have acknowledged the last presentation. However it may be about the age or non-age, he is pleading now on your title. Why should he not be received to do this ?

Friskeney. If he had said at the beginning that our great-grandfather never presented etc. he would not afterwards be received to allege presentation[s] by his predecessors. Therefore, since at the beginning he has pleaded on the estate of his predecessors, he cannot now resort to plead on the estate of our ancestors.

Scrope J. A plea is never in issue until the parties have settled their answers, for it is on what the parties have settled that the issue is affirmed by the court; but now the prior will not abide by his answer, but has waived it, and pleads on your title. To this you must answer.

Malberthorpe. Sir, it seems to me that they have had too great an advantage, seeing that they have shown all that they have for them, by laying th[ese] presentation[s] in them, for they are allowed to plead on our estate when we have defeated theirs by our reply. Besides this they have not yet said anything for which they ought to have a writ to the bishop etc.

Westcote. Si avoms, qar vous nous avetz granté la possession e a tout[1] ceo si deffessoms nous vostre dreit etc. si l'enqueste passe pur nous quant a cesti bref etc. e par tant avoms assetz moustré etc.

Toud. Vous estes homme de religion a qi nule ren sanz title de dreit e commission[2] du roy ne put estre approprié, par quei tout ussetz vous occupé ascun dreit en temps etc. contre[3] etc. ceo ne vous dorra pas title.

Ber. Resceivez l'averement.

Mal. Qe nostre besael F. par non presenta etc. e qe a son presentement fu resceu e institut de evesqe, prest etc.

Scrop. Le revers etc.

Par yceo plee si puet homme veer qe si le destourbour moustre son title, tout ne soit il sufficient il se put entrelesser e pleder al title le pleintif e issi avera l'avantage d'ampartes.[4]

II.[5]

Johan de Staunton porta le *quare impedit* vers le priour de Monemouthe et counta qe atort lui destourbe etc. Et pur ceo atort etc. par la resoun qe un son auncestre Thomas par noun fut seisi del maner de Staunton a qi l'avoweson etc. est appendaunt le quel Thomas presenta un son clerk Thomas par noun qe a son etc. institut de evesqe en tenps le roy E. pere le roy etc. De Thomas descendi le dreit del avowesoun etc. a Willem, de Willem a Johan, de J. a L. q'ore demaunde sa pleinte[6] et issint appent a lui presenter.

Herle. Sire, qe Matheu nostre predecessour priour drein presenta un son clerc Johan Joce par noun qe etc. et avaunt lui un Richard autre predecessour etc. ; et avaunt lui, dit qe autres deux furent presentez ; et issint presentames nous dareyn. Et demaundoms jugement de bref.

West. Il dient qe lour predecessour presenta drein auxi com il feussent en un dreyn presentement et il ne ount nul tiel bref ceinz et ne respoignent nent a mesme cele. Jugement etc.

Herle. Nous avoms fet title q'est en abatement de vostre bref et si nous le eussoms fet, tut eussoms nous abatu vostre bref par response, nous n'averoms pas bref al evesqe.

Ber. Le priour vous ad fet title. Responez a son title.

Et fut[7] *West.* chacé a ceo respondre.

[1] tut *T.* [2] congé *T.* [3] outre *T.* [4] de ambepart *T.* [5] From *M* (fol. 42 r°). [6] q'ore . . . pleinte *written in error for* q'ore se pleinte. For a similar clause *see* vol. vi. p. 181. [7] fit *M.*

Westcote. Yes, we have, for you have granted us the possession, and so, if we defeat your right etc., the inquest passes for us as regards this writ etc. and therefore we have sufficiently shown etc.

Toudeby. You are a man of religion to whom nothing save by title of right and the king's commission can be appropriated. Therefore though you may have obtained some right, in time etc. against etc., that will not give you a title.

Bereford C.J. Receive the averment.

Malberthorpe. Our great-grandfather presented etc. [one Philip] by name, who on his presentation was admitted and instituted by the bishop. Ready etc.

Scrope. The contrary etc.

From this plea it may be seen that if the disturbant show his title, should it be not sufficient, he can withdraw therefrom and plead on the title of the plaintiff, and so have the advantage doubly.

II.

John of Stanton brought the *quare impedit* against the prior of Monmouth and counted that the prior wrongfully disturbed him etc. And for this wrongfully etc., because one his ancestor [Richard] by name was seised of the manor of Stanton to which the advowson etc. is appendant, and this [Richard] presented one his clerk [Philip] by name who on his presentation etc. was instituted by the bishop in the time of king Edward father of the king etc. From [Richard] descended the right of the advowson etc. to [Philip], from [Philip] to [Thomas] and from [Thomas] to [John] who now complains,[1] and so it belongs to him to present.

Herle. Sir, Mathew the prior our predecessor last presented his clerk one John Joce by name who etc.; and before him one Richard, another predecessor, [presented] etc.; and before him, [we] say that two others were presented and so we presented last. We ask judgment of the writ.

Westcote. They say that their predecessor presented last as if they were pleading in a *darain presentment*; and they have no such writ here; and they make no answer to this writ. We ask judgment etc.

Herle.[2] We have made a title which is in abatement of your writ, and if we had [not] made a title even though we were to abate your writ by our answer, we should not have a writ to the bishop.

Bereford C.J. The prior has made a title. Answer his title.

And *Westcote* was driven to answer this.

[1] See note opposite. [2] The correct translation of this speech is doubtful. The context seems to require the word 'not' (as printed in brackets).

West. [et] *Scrop* pere[1] isserent d'enparler et revindrent et disseint qe a ceux[2] qe Johan Joce fut presenté nous estoimes deinz age, par quei cele presentement ne nous deit grever.

Toud. Quei responez en dreit des autres presentements ?

Scrop. A ceo n'avoms mye mester a respondre, qe nous ne sumes cy a respondre en un dreyn presentement, par quei assez nous suffit a respondre a l'un presentement.

Ber. Il vous covent respondre a son title, q'il fet son title de iiij presentements et vous ne responez forsqe a un ; donqe n'avez mye defet son title qe bien avoms entendu qe vous avez conu le drein presentement et en deffesaunt cele presentement aver dit qe nuyre vous deit par la resoun ceo dites vous qe a tiel tenps si estoiez vous deinz age, quei responez a les autres ? (Et fut chacé par la court a respoundre a les autres.)

Scrop. Sire, quaunt al presentement procheinement avaunt, nous dioms qe nostre pere fut deinz age etc.

Herle. Quei responez a les autres ij ?

[*Scrop*]. N'entendoms mye qe nous avoms mester.

Ber. Vous avez conu les ij presentementz et dites qe grever ne vous deit, et avez alleggé le noun-age *ut supra* ; unqore n'avez mie defet son title, et si vous ne pussez defere son title il deferra vostre bref.

Scrop. Quaunt a les ij autres nous vous dioms q'il n'y avoit nul presentement forsqe les deux les queux nous avoms conu etc., et pus le presentement nostre auncestre de qi nous avoms pris nostre title. Et demaundoms jugement.

Herle. La ou il dient qe lour auncestre presenta un etc. Thomas par noun qe a son etc., Sire, la vous dioms nous qe celui Thomas ne fut unqes persone enpersonée de evesqe, prest etc.

West. A ceo ne devez avenir qe vous avez respondu le quel respons nous avoms defet. Jugement si vous pussez resortir a autre respons.

Toud. Quei ceo qe nous avoms dit en fessaunt nostre title est a vostre bref et nent a vostre accioun, par quei bien nous list respondre a vostre accioun et a defere vostre title.

Scrop. Auxi haut respons est ceo qe vous ore donez pur respons, et auxi peremptore, come ceo qe vous ussez al accioun. Jugement si vous pussez resortir.

[1] per' *M.* [2] Apparently an error for 'tens.'

Westcote and *Scrope*[1] went out and imparled. They came back and said that at the time[2] when John Joce was presented we were within age. Therefore that presentation ought not to harm us.

Toudeby. What do you answer with respect to the other presentations?

Scrope. We have no need to reply to them, for we are not here to reply on a writ of *darain presentment.* Therefore it is sufficient for us to reply to one presentation.

Bereford C.J. You must answer his title. He makes his title out of four presentations, and you reply to one only. Therefore you have not defeated his title, for we have heard that you acknowledged the last presentation, and to defeat that presentation you said that it ought [not] to harm you because, so you said, at that time you were within age. What do you reply to the other presentations? (And he was driven by the court to reply to the others.)

Scrope. Sir, as to the presentation next before the last, we say that our father was within age etc.

Herle. What do you reply to the other two presentations?

[*Scrope.*] We do not think that we have need to reply etc.

Bereford C.J. You have acknowledged the two presentations, and you say that these ought not to harm you; and you have alleged nonage (as above); but still you have not defeated his title; and if you cannot defeat his title, he will defeat your writ.

Scrope. As to the two other presentations we tell you that there were no presentations save the two which we have acknowledged etc.; and they were after the presentation by our ancestor from whom we have taken our title. We ask judgment.

Herle. Sir, where they say that their ancestor presented one etc. [Philip] by name who on his presentation etc. there we tell you that this [Philip] never was a parson 'imparsonated' by the bishop. Ready etc.

Westcote. You ought not to come to that; for you have made your answer, and we have defeated that answer. Judgment whether you can resort to another answer.

Toudeby. Whatever we have said in making our title is in exception to your writ, and not to your action. Therefore we may answer your action and defeat your title.

Scrope. That which you now give for an answer is as high and as peremptory as that which you would have to the action. Judgment whether you can resort.

[1] The word 'per' is not translated. It may have been inserted in the text in error. [2] See note opposite.

Toud. Nous vous dioms q'il ne fut unqes persone enpersoné ne institut etc. la quele chose il ne dedient pas. Jugement et prioms bref al evesqe. (Et se tyndrent la sur cele respons.)

West. [et] *Scrop* furent chacez a respondre a ceo et disseient, Sire, la ou il dient qe Thomas qe fut presenté par nostre auncestre ne fut unqes persone enpersoné ne institut de evesqe, nous vous dioms qe nostre auncestre presenta *ut supra* et fut persone enpersonée et institut de evesqe ; prest etc.

Et alii econtra.

The Record of the Case.

De Banco Rolls, 4 Edw. II., Trinity (No. 187), r. 1d., Gloucestershire.

Prior de Monemuth' summonitus fuit ad respondendum Iohanni de Staunton' de placito quod permittat ipsum presentare idoneam personam ad ecclesiam de Staunton' que uacat et ad suam spectat donacionem etc. Et unde idem Iohannes per attornatum suum dicit quod quidam Ricardus Walding' antecessor predicti Iohannis cuius heres ipse est fuit aliquo tempore seisitus de manerio de Staunton' cum pertinenciis ad quod aduocacio predicte ecclesie pertinet etc. qui ad eandem ecclesiam presentauit quemdam magistrum Philippum de Staunton' clericum suum qui ad presentacionem suam fuit admissus et institutus tempore pacis tempore regis Edwardi patris domini regis nunc per cuius mortem predicta ecclesia modo uacat etc. Et de predicto Ricardo descendit ius presentandi etc. racione manerii predicti cuidam Philippo ut filio et heredi etc. Et de ipso Philippo cuidam Thome ut filio et heredi etc. Et de ipso Thoma descendit ius presentandi etc. racione manerii predicti isti Iohanni de Staunton' qui nunc queritur etc. ut filio et heredi. Et dicit quod ipse modo est seisitus de predicto manerio etc. ad quod predicta aduocacio pertinet. Et ea racione ad ipsum pertinet presentare ad predictam ecclesiam set predictus prior ipsum iniuste impedit etc. unde dicit quod deterioratus est et dampnum habet ad ualenciam ducentarum librarum. Et inde producit sectam etc.

Et prior per attornatum suum uenit et defendit uim et iniuriam quando etc. et dicit quod predictus Iohannes presentacionem suam ad predictam ecclesiam clamare non potest etc. Dicit enim quod predictus magister Philippus quem idem Iohannes dicit ipsum Ricardum antecessorem suum ad predictam ecclesiam presentasse etc. non fuit ad eandem per ipsum Ricardum presentatus nec ad presentacionem ipsius Ricardi ad predictam ecclesiam admissus seu institutus etc. sicut predictus Iohannes dicit. Et de hoc ponit se super patriam. Et Iohannes similiter.

Ideo preceptum est uicecomiti quod uenire faciat hic a die sancti Iohannis Bapiste in quindecim dies xij etc. per quos etc. et qui nec etc. quia tam etc.

Postea in octabis sancti Michaelis anno regni regis nunc quinto uenerunt predictus Iohannes et predictus prior per attornatum suum hic et similiter iuratores de consensu parcium electi qui dicunt super sacramentum suum quod predictus Ricardus de Walding' auus predicti Iohannis tempore pacis

Toudeby. We tell you that he never was parson 'imparsonated,' nor instituted etc.; and they do not deny this. We ask judgment and pray a writ to the bishop. (And they held to this answer.)

Westcote and *Scrope* were driven to answer this and said: Sir, where they say that [Philip] who was presented by our ancestor was never a parson 'imparsonated,' nor instituted by the bishop, we tell you that our ancestor presented (as above) and [that this Philip] was a parson 'imparsonated' and instituted by the bishop. Ready etc.

And the others to the contrary.

Translation of the Record.

For the reference, see opposite.

The prior of Monmouth was summoned to answer John of Stanton on a plea that he permit him to present a fit parson to the church of Stanton which is void and to his gift belongs etc. And whereupon the same John by his attorney says that one Richard Walding ancestor of the aforesaid John whose heir he is was sometime seised of the manor of Stanton with its appurtenances to which manor the advowson of the aforesaid church pertains etc. who to the same church presented one Master Philip of Stanton his clerk who on his presentation was admitted and instituted in time of peace in time of king Edward I. and by his death the church is now void etc. And from the aforesaid Richard descended the right of presentation etc. by reason of the manor aforesaid to one Philip as son and heir etc., and from him the said Philip to one Thomas as son and heir etc., and from him the said Thomas descended the right of presentation etc. by reason of the manor aforesaid to this John of Stanton who now complains etc. as son and heir. And he says that he is now seised of the aforesaid manor etc. to which the aforesaid advowson belongs, and for that reason it belongs to him to present to the aforesaid church, but the aforesaid prior wrongfully disturbs him etc. Whereupon he says that he is the worse and has damage to the value of two hundred pounds; and thereof he brings suit etc.

And the prior by his attorney comes and denies tort and force when etc. And he says that the aforesaid John cannot claim his presentation to the aforesaid church etc.; for, he says, the aforesaid Master Philip whom the same John says that he the said Richard his ancestor had presented to the aforesaid church etc. was not presented to the same by him the said Richard nor on the presentation of him the said Richard was he admitted or instituted etc. to the aforesaid church as the aforesaid John says; and of this he puts himself upon the country; and John likewise.

Therefore the sheriff is ordered to cause to come here on the quindene of St. John the Baptist twelve etc. by whom etc. and who neither etc. because as well etc.

Afterwards on the octave of St. Michael 5 Edw. II. the aforesaid John and the aforesaid prior by his attorney came here, and likewise a jury chosen by the consent of the parties who say upon their oath that the aforesaid Richard of Walding, the [great-]grandfather of the aforesaid John, in time of peace

The Record of the Case—*continued.*

presentauit predictum magistrum Philippum clericum suum ad eandem ecclesiam qui ad presentacionem suam fuit admissus et institutus in eadem Quesiti de ualore ecclesie dicunt quod ualet per annum decem libras. Ideo consideratum est quod predictus Iohannes recuperet inde presentacionem suam uersus predictum priorem ad eandem ecclesiam. Et habeat breue episcopo Herefordensi quod non obstante reclamacione predicti prioris ad presentacionem predicti Iohannis ad predictam ecclesiam idoneam personam admittat. Et similiter quod recuperet dampna sua scilicet mediatatem ualoris ecclesie per annum eo quod tempus semestre nondum elabitur, unde habet centum solidos et prior in misericordia etc.

Dampna centum sol. unde xl. sol. clericis.

27. REX *v.* HOTHWAIT.[1]

Quare impedit pur le roy; ou il allegga un graunt sanz especiauté, et pus il se fist aultre title.

Le roi porta son *quare impedit* vers Thomas Howat et dit qe atort ly destorbe et pas ne ly soeffre presenter [2] covenable persone a la eglise de Byngham etc. et qe l'avoweson a ly appent par la reson qe une Isabel de Force countesse de Aumerle presenta un son clerck Roger de Stotton par noun a mesme l'eglise, qe a son presentement feust resceu et institut de evesqe en temps de pees en temps le roi H., par quei mort la eglise [3] voida [4] par quei la countesse presenta autrefoitz un son clerk Richard le fitz Johan etc. en temps le roi E. qe mort est par quei resignement la eglise autrefoitz [5] voida par quei mesme cele Isabel presenta un son clerk Auntoyne de Bek par noun qi etc. en temps de mesme le roi issint q'en mesme le temps debate se fist anno regni regis Edwardi nono entre les avauntdite Isabel de Force et [6] Robert de Yanewyte Walter de Twyneham et Isabel sa femme pleignauntz issint qe l'avauntdite Isabel de Force [7] graunta pur ly et pur ces heirs qe a la prochein voidaunce qe le dit Robert presentereit s'il fust en vie,[8] s'il fust mort qe les avauntdites Walter et Isabel et

[1] From *B* collated with *C*, *M*, *P*, *Q*, *T*. See note opposite. All these reports, except that in *T*, are attributed to Michaelmas term, 5 Edw. II. The case however was first heard in Trinity term, 4 Edw. II. and it was enrolled in that term. [2] *Sic T*. *For* qe . . . presenter, *subs.* q'il present' *B*, etc. presenta *C*, etc. present' *M*, *P*, *Q*. [3] *Ins.* est ore *B*. [4] voide *B*, se voyda *M*, *P*, *T*. [5] *Om.* un son . . . autrefoitz *C*. *Ins.* se *M*, *P*, *T*. [6] *Om.* et *B*, *subs.* defendant et *T*. [7] *Ins.* deforciaunt *M*, *P*, *Q*. [8] *Ins* et *C*, *M*, *P*, *T*.

Translation of the Record—*continued.*

presented the aforesaid Master Philip his clerk to the same church who on his presentation was admitted and instituted in the same. Asked about the value of the church they say that it is worth ten pounds a year. Therefore it is awarded that the aforesaid John recover his presentation against the aforesaid prior to the same church and that he have a writ to the bishop of Hereford that notwithstanding the claim of the aforesaid prior he admit on the presentation of the aforesaid John a fit parson to the aforesaid church; and likewise that John recover his damages, to wit, a half of the annual value of the church, on the ground that the period of six months has not yet elapsed, that is to say, one hundred shillings; and that the prior be in mercy etc.

Damages one hundred shillings, whereof forty shillings to the clerks.

27. REX *v.* HOTHWAIT.[1]

A *quare impedit* on behalf of the king, where he alleged a grant without specialty, and afterwards made for himself another title.

The king brought his *quare impedit* against Thomas Hothwait and said that Thomas wrongfully disturbed him and suffered him not to present a fit parson to the church of [Brigham] etc. and that the advowson belonged to him for the reason that one Isabel de Forz countess d'Aumale presented one her clerk Roger of Seyton[2] by name to the same church, who on her presentation was admitted and instituted by the bishop in time of peace in the time of king Henry and by his death the church became void; whereupon the countess presented again one her clerk Richard the son of John etc. in the time of king Edward now dead, and by his resignation the church again became void; whereupon this same Isabel the countess presented one her clerk Anthony of Bek by name who etc. [was presented etc.] in the time of the same king; and at that same time a dispute arose in the ninth year of the reign of the said king Edward between the aforesaid Isabel de Forz [as deforciant] and Robert of Yanwait Walter of Twyneham and Isabel his wife plaintiffs, so that the aforesaid Isabel de Forz as deforciant granted for herself and her heirs that at the next avoidance the said Robert should present if he were alive, and if he were dead that the aforesaid Walter and Isabel

[1] The reference to the Record of this case, which was partly heard in the Common Bench in Trinity term, 4 Edw. II, is *De Banco Rolls*, No. 187 r. This Record was brought by the king's order into the King's Bench in Hilary term 5 Edw. II for consideration there. The proceedings in that court relating thereto are reported in some of the Year Books of that term and together with the Record of the case have already been printed. (*See* vol. xi. p. 134.) It appears that the true name of Robert of Mauentwyth who is mentioned in that Record is Robert of Yauentwyth.

[2] This Roger of Seyton was appointed Chief Justice of the Common Bench in 2 Edw. I.

les heirs Isabel presenterent saunz dedire de la countesse ou de ces heirs. Et pur ceo graunt les avauntditz Robert Walter et Isabel graunterent pur eux et pur lez[1] heirs Isabel qe[2] la prochein voidaunce après la mort ou la cessioun le clercke presenté par Robert Walter et Isabel oue les heirs Isabel[3] qe la dite countesse ou les heirs la countesse de coe temps en avaunt par vertu de la fyn presenterent a la eglise etc.[4] issi qe par cessioun Auntoyne de Bek qe fust esleu evesqe de Durem la eglise se voida ; par quei Robert de Yanewyte presenta a la eglise par vertue de la fyn un son clerke Robert de Musegrave qe a son etc. en temps etc. en temps le roi E[5] qu'ore est etc. par qi mort la eglise est ore voide, la quel countesse[6] dona au roi E. piere etc. xx darrez de rente de la ville de Byngham ensemblement ovesqe l'avoweson avauntdite a tenir a ly e a sez heirs etc. De E. le roy descendi la rente ensemblement ove l'avoweson avauntdit[7] a nostre seignur le roi qu'ore est destorbé ; et issint appent a ly a presenter etc. et issint le destorbe etc. Et s'il veot dedire prest del averer pur le roi.

Denom. Sire, vous veiez bien coment nostre seignur le roi ad pris son title de Isabel countesse etc. et ad dit q'ele presenta iij foitz et ceo est un *quare impedit* et[8] veot estre terminé sour certein point et noun pas en forme d'assise. Jugement etc.

Scrop. Ne[9] serroit le counte bone d'aver assigné un[10] presentement ; en taunt com nous avoms dit et assignez[11] plus etc.[12] et[13] par taunt n'est pas le counte abatable ; einz le plus fort etc.[14] (Et fust agardé bone etc. set secus[15] est si pro alio quam pro rege.)

Denom. Nous entendoms qe le roi ne veot estre resceu a cest *quare impedit* qar il cleime cest avoweson com estraunge purchaceor et ne moustre nuyl especiauté coment ly et ses progenitours sount avenuz ne il ne lye nul possessioun[16] en nul de ceux[17] progenitours ne[18] en sa persone demene.[19] Jugement si sauntz especiauté deit[20] estre resceu.

Scrop. Nous n'avoms meister d'affermer dreit de presenter[21] en nostre persone, del houre qe vous ne affermez dreit en vostre persone.

[1] lour *B.* [2] *Ins.* a *C, M, P, T.* [3] *Om.* les . . . Isabel *M.* [4] *For* de coe . . eglise etc., *subs.* presenterent saunz contredire etc. Et issy Robert Wauter et Isabel et les heirs Isabel, et la countesse ou lez heirs la countesse chescun après autre chaungablement presenterent a la eglise etc. *C* ; similarly, *M, P* ; *subs.* checun après autre changeblement presenterent a la eglise avantdite *T*, *sim. Q.* [5] *Ins.* le pere etc. *T.* [6] *Om.* q'ore est . . . countesse *T.* [7] *sic T. Om.* a tenir . . . avauntdit *B. Sim.* in *C.* [8] qe *T. Om.* et *Q.* [9] Tut *C, T*, ne *M, P*, tust *Q.* [10] le *B.* [11] *Ins.* et *B. Ins.* est *C, Q.* [12] *For* en taunt . . . plus etc. *subs.* mès com nous avoms assigné plusours en taunt est le count plus certain *M, P.* [13] *Om.* et *C, Q, T.* [14] *Om.* einz . . . etc. *M, P.* [15] dubium *T.* [16] seisine *C.* [17] ces *P, Q*, sez *T.* [18] *Om.* ne *B.* [19] *Ins.* par presentement *T.* [20] velt il *M*, veot il *P.* [21] presentement *M, P.*

and the heirs of Isabel should present without contradiction by the countess or her heirs. And for this grant the aforesaid Robert Walter and Isabel granted for themselves and for the heirs of Isabel that on the next avoidance after the death or cession of the clerk presented by Robert Walter and Isabel or the heirs of Isabel, the said countess or the heirs of the countess should present without contradiction by etc. And so Robert Walter and Isabel and the heirs of Isabel, and the countess or the heirs of the countess each one after the other should present alternately to the church etc.[1] and so by the cession of Anthony of Bek who was elected bishop of Durham the church became void, whereupon Robert of Yanwait presented to the church by virtue of the fine one his clerk Robert of Musgrave, who on his presentation etc. in time etc. in the time of king Edward [the father of the king] who now is, [was presented etc.]; and by Robert's death the church is now void. And the countess gave to king Edward, the father of the king who now is, twenty pence of rent in the town of Brigham together with the advowson aforesaid to hold to him and his heirs etc. From Edward the king the rent together with the advowson aforesaid descended to our lord the king who is now disturbed and so it belongs to the king to present etc., and so Thomas of Hothwait disturbs him etc. If he wishes to deny it ready is John of Beverley[2] to aver it for the king.

Denham. Sir, you see well how our lord the king has taken his title from Isabel the countess etc. and has said that she presented three times. This is a *quare impedit* and it should be determined upon one certain point and not in the form of an assize. We ask judgment etc.

Scrope. Would it not have been a good count to have assigned one presentation? but because we have mentioned and assigned more than one presentation the count is not to be abated, for rather is it thereby the stronger etc. (And it was awarded good: but it would be otherwise if made on behalf of any other than the king.)

Denham. We think that the king would not desire to be received to this *quare impedit*, for he claims this advowson as a strange purchaser, and shows no specialty by which he and his progenitors have come to it; nor does he allege any possession in any of these progenitors nor in his own person. Judgment whether without specialty he ought to be received.

Scrope. We have no need to affirm a right of presentation in our person, since you do not affirm a right in your person.

[1] The text in *B* is defective here. The translation follows the text in *C*.

[2] The name of the King's Serjeant is taken from the Record. See xi. 134.

Berr. Un chief seignur purchace[1] terres ou tenementz de soun tenaunt[2] par un rendre saunz especiauté[3]; *a multo forciori* le roi en son realme etc.

Denom.[4] Nous vous dioms qe le maner de Byngham a qi l'avoueson est appendaunt fust en ascun temps en la seisine un Waldof de Beham qe a mesme l'eglise presenta un son clerk Thomas de Beaham par noun qe a son presentement feust resceu etc. en temps de pees en temps le roi H., dount de Waldolf descendy le dreit del maner et del avoweson a Johan com a fitz et heir, de Johan a Johanne et a Alice com a filles et un heir; dount Alice se lessa espouser a Robert de Yanewyte et Jone se lessa[5] esposer a Thomas de Hytewite ael cesti Thomas. Et puys le dites Robert et[6] Alice Thomas et Johanne departirent l'eritage parentre eux com parentre parceners et graunterent entre eux qe de cel houre en avaunt qe un presentereit une foitz et un autre aultre foiz et issint chescun presentereit après autre par reson de torn; dont après la mort l'eynesse[7] qe fust la femme Robert si fut Robert[8] tenaunt par la courtesie d'Engleterre de la moité du maner a qi l'avoweson etc.[9] Robert presenta par reson de torn un son clerk Robert de Musgrave par noun etc. Et pur ceo qe ceo fust la premer voidaunce après la purpartie et il tient par la courtesie[10] d'Engleterre com du dreit sa femme qe fust eynesse parcenere, si presenta il Robert de M.[11] par qi mort la eglise est ore voide; dount de Johane descendy le dreit del autre moité du maner etc. a un Gilebert com a fitz et heir, de Gilebert a Thomas com a fitz et heir etc. vers qi etc. et issint appent a ly[12] a presenter par la reson del seconde torne et ne mye au roi. Et demaundoms jugement, de puys qe nous avoms continué l'avoweson en la saunke par reson du[13] maner a quei etc. dount nous sumes seisi de la moité, si le roi q'est estraunge purchaceor saunz moustrer especiauté coment l'avoweson en sa[14] persone est translaté, veot estre resceu.

Scrop. Vous avez affermé le dreit del avoweson en vostre persone, descendaunt a[15] Waldolf[16] com[17] a heir lynealment; et ore vous pledez a[18] nous par autre title, qe sount deux grosses. Et pur ceo vous tenez al une.

Pass. Le dreit qe nous affermoms en nostre persone, ceo est d'aver bref al evesqe et ceo qe nous pledoms a vous, c'est a ouster[19] qe vous ne poiez clamer rien en l'avoweson saunz especiauté.

[1] puet purchacer *M*, *P*, *T*. [2] *Om.* de soun tenaunt *M*, *P*. [3] The words 'ses heirs serront barrez' are here interlineated in *B*. [4] *Pass. T*. [5] *Om.* espouser . . . lessa *M*. [6] *Om.* Robert et *B*. [7] *Ins.* seore *C*, *P*, *T*. [8] *Om.* si fut Robert *B*. [9] *Ins.* et *M*, *P*. [10] ley *M*, *P*. [11] *Om.* si . . . M. *M*, *P*. [12] *Om.* a ly *B*. [13] *Ins.* saunk et le *B*. [14] la *B*. [15] de *C*, *T*, etc. a M. *P*. [16] Johanne etc. *M*, *P*. *Ins.* a vous *C*, *T*. [17] *Om.* com *C*. [18] ov *M*, *P*. [19] *Ins.* vous *C*, *T*; *Ins.* vous d'accioun *M*, *P*.

Bereford C.J. A chief lord may purchase lands or tenements from his tenant by a render without any specialty. *A multo fortiori* may the king in his realm do so etc.

Denham. We tell you that the manor of Brigham to which the advowson is appendant was sometime in the seisin of one Waltheof of Brigham who presented to the same church one his clerk Thomas of Brigham by name who on his presentation was admitted etc. in time of peace in the time of king Henry. From Waltheof descended the right of the manor and advowson to John as son and heir. From John to Joan and Alice as daughters and one heir. Alice was married to Robert of Yanwait and Joan to Thomas of Hothwait grandfather of this Thomas. And then the said Robert and Alice Thomas and Joan divided the inheritance between them as between parceners and they mutually granted that from that time forward one party should present once and the other another time, and so each should present one after another by right of turn. Therefore after the death of Alice the elder sister who was the wife of Robert, this Robert was tenant by the courtesy of England of a moiety of the manor, to which the advowson etc., and he presented by right of his turn one his clerk Robert of Musgrave by name etc. And because this was the first avoidance after the division, and he held by the courtesy of England as of the right of his wife who was the elder parcener, he presented Robert of Musgrave, by whose death the church is now void. From Joan descended the right of the other moiety of the manor etc. to one Gilbert as son and heir; from Gilbert to Thomas as son and heir etc. against whom etc.; and so it belongs to him to present by reason of the second turn, and not to the king. We ask judgment, seeing that we have continued the advowson in the blood by reason of the manor to which etc. and whereof we are seised of a moiety, whether the king who is a strange purchaser without showing specialty by which the advowson has been transferred into his person, would wish to be received.

Scrope. You have affirmed the right of the advowson in your person with lineal descent from Waltheof to you as heir, and now you are pleading with us by another title; and these are two principal matters, therefore hold yourselves to one of them.

Passeley. The right which we affirm in our person is to have a writ to the bishop; and what we are pleading with you is to oust you from being able to claim anything in the advowson without specialty.

Berr.[1] Si le roi ne deit estre[2] resceu qi serra partie a vous a trier vostre dreit ?

Pass. Moustrez[3] donqe soun dreit.

Scrop. Vous ne dedites pas le[4] presentement Isabel etc. ne vous ne dedites pas le feoffement qe la countesse fist a nostre seignur le roi. Jugement.

Pass. La ou il dit qe la countesse presenta Auntoyne de Bek etc. adonqe fust meisme cesti Thomas deinz age et en la garde meisme cele countesse, prest etc.

Scrop. Quei responez vous a les autres presentementz ?

Pass. Ceo est un *quare impedit* ou suffit a respondre a un presentement.

Berr.[5] Tant cum un presentement dure[6] nent defet a ly demurt dreit de presenter.

Denom. La ou il dient qe la countesse presenta Richard le fitz Johan etc. Sire, nous vous dioms qe a tieu temps Thomas nostre ael tient la moité du maner par la courtesie d'Engleterre par[7] quei etc. et quant a terce presentement,[8] qe la countesse presenta Roger de Stotton, Roger ne fust unqes persone, prest etc.

Scrop. Sire, vous[9] avez bien entendu coment nous avoms pris nostre title *ut supra* et coment T. ad pris son title *ut supra* et coment il ad respoundu a nos presentementz en defesaunt[10] nos presentementz[11] *ut supra*. Nous entendoms mye qe il[12] soul a respoundre puet avenier,[13] qe l'estatut veot qe les heirs après la mort etc. averont etc. mesme l'accioun et[14] le respouns com averoit etc. et il ad fait descente de Waldolf a J., de J. a Johanne et a Alice en supposaunt q'il est[15] coheir par quei nous entendoms mye q'en sa bouche y[16] gise tieu respouns etc. D'altrepart vous avez lié la seisine du maner a quei etc. en la mayn[17] Waldolf descendaunt a J., de J. a Johanne et a Alice et avez dit coment la purpartie se fist entre eux et n'avez pas dit qe nuyl en le saunke après la departie[18] fait presenta, dount nous demaundoms jugement etc.

Pass. Sire, nous avoms pris nostre title de Waldolf qe presenta etc. et avoms fait la descente etc. et auxi avoms dit qe la purpartie etc. et dioms qe Robert de Yanewyte presenta la dreine persone *ut supra* com par reson de torne et ceo la procheyn voidaunce après le presentement

[1] *Herle M.* [2] *Om.* deit estre, *Ins.* serra *T.* [3] Moustre il *C, P.* [4] lez *C, Q, T.* [5] This speech, which occurs in *C, M, P, Q* and *T*, is omitted in *B*. The text is from *C*. [6] demurt *T.* [7] a *C.* [8] *Om.* terce presentement *C, M, P, Q, T. Ins.* ceo *C, M, P, Q, T.* [9] *Om.* Sire, vous *Q.* [10] defendant *M.* [11] *Om.* en . . . presentementz *T.* [12] *Om.* il *C, Q.* [13] *For* a . . . avenir, *subs.* put aver resp' *M*, put aver a respouns *P*, a tieu response puet avenir *T.* [14] *Ins.* mesme *M, P.* [15] ad *T.* [16] *Om.* y *M, T.* [17] persone de *M, P.* [18] purpartie *C, M, P, T.*

BEREFORD C.J. If the king ought not to be received, who can be a party to try your right ?

Passeley. Show us then his right.

Scrope. You do not deny the presentation of Isabel etc. nor do you deny the feoffment which the countess made to our lord the king. We ask judgment.

Passeley. There where he says that the countess presented Anthony de Bek etc. [we say that] at that time this same Thomas was within age and in the ward of this same countess. Ready are we to aver it.

Scrope. What do you answer to the other presentations ?

Passeley. This is a *quare impedit*, in which it is sufficient to answer one presentation.

BEREFORD C.J. So long as one presentation remains undefeated, the right of presenting remains to him.

Denham. Sir, there where they say that the countess presented Richard the son of John etc. there we tell you that at that time Thomas our grandfather held the moiety of the manor by the courtesy of England, wherefore etc. ; and as to the third presentation, when the countess presented Roger of Seyton, we say that Roger was never parson etc. Ready etc.

Scrope. Sir, you have heard how we have made our title (as above), and how Thomas has made his title (as above) and how he has answered our presentations, by undoing them (as above). We do not think that he alone can arrive at answering us, for the statute [1] says that the heirs after the death etc. will have etc. the same action and the same answer as he had etc.; and he has made his descent from Waltheof to John ; and from John to Joan and Alice, so representing that he is a coheir, and therefore we do not think that in his mouth such an answer etc. lies. Besides you have laid the seisin of the manor to which etc. in the hand of Waltheof with descent to John, from John to Joan and Alice ; and you have said how a division was made between them ; but you have not said that anyone of the blood after the partition was made has presented. Therefore we ask judgment etc.

Passeley. Sir, we have made our title from Waltheof, who presented etc. and we have made the descent etc. and we have also said that the partition was etc. ; and we say that Robert of Yanwait presented the last parson (as above) by right of turn, and this is the next avoidance

[1] Stat. Westm. II. c. 5.

Robert a[1] quei[2] nous soul est accioun donée ore. Et demaundoms jugement desicom nous avoms defaite vos presentementz et avoms lié le dreyt en nostre persone de presenter; demaundoms[3] jugement, et prioms bref al evesqe.

Et habuerunt diem in octabis sancti Michaelis; ad quem diem :—

Scrop. La ou il fait sa descente de son commune auncestre[4] par my Gilebert son pere nous vous dioms qe Gilebert son pere[5] par my etc.[6] porta soun *quare impedit* vers meisme la countesse de meisme l'avoweson etc. en la court nostre seignur le roi a Westmustre devaunt Sire Roger de Stotton as utaves de seint Michel l'an quarte et fust le plee continué jesqes as utaves de seint Johan prochein ensewaunt qe la countesse vient par attachement et par la graunt destresse; a quel jour etc. ele recovera[7] soun presentement etc. vers le dit G. et avoit bref al evesqe *non obstante* etc.; et de ceo vouchoms record, s'il voillent dedire, jugement. Desicom le dreit del avoweson et de cel presentement par cele recoverer feust esteint en la persone Gilebert vostre pere et vous ne poiez estre de meillour condicioun q'il ne serroit s'il fust en vie mès s'il fut en vie[8] il[9] ne serroit mye resceu, jugement si vous par my ly rien poez demaunder.

Pass. Le roi ne puet mye estre partie[10], qar il ne cleyme mye cest avoweson appendaunt a la coroune, einz com estraunge purchaceour, et il[11] ne moustre especiauté de cel purchace. Jugement.

Scrop. Vous avez wayvé[12] cel excepcion en taunt com vous responez[13] a les presentementz la countesse, par quel respons le play put aver pris issue etc., com aver dit de pleyn age qaunt la countesse presenta Auntoyne de Bek et issint avez pledée plus haut. Jugement si vous poiez resorter etc.

Herle. Nous chalangoms[14] toutz jours qe le roi fust estraunge purchaceour, et[15] moustra nul especiauté; et ceo qe vous[16] responez[17] au presentement la countesse si fust a defaire le title etc. et dyoms qe adonqes sauvé nous feust la excepcion etc. et la court nous chacea a respoundre.

Scrop. Nous avoms defait[18] chescun manere de possession par le recoveryr qe la countesse avoit vers Gilebert vostre[19] pere par quei vous ne poiez mye estre partie a nous a trier etc.

[1] par *C*, pur *M*, *P*, *T*. [2] *Ins.* a *C*, *M*, *P*, *T*. [3] *Om.* demaundoms *M*, *P*. [4] *Ins.* descendaunt et *T*. [5] *Om.* nous vous . . . pere *B*. [6] *Ins.* qi *M*, *P*. *Ins.* (as an interlineation) G. *B*. [7] recovery *T*; recoverit *P*. [8] *Om.* mès s'il fut en vie *B*, *M*, *P*. [9] et s'il *M*, *P*. [10] *Ins.* a ceo *M*, *P*. [11] s'il *T*. [12] veu *M*. [13] avez respondu *M*, *P*. [14] chargeoms *M*; chargoms *P*; chalaungames *T*. [15] *Ins.* q'il ne *M*, *P*. *Ins.* ne *T*. [16] nous *M*, *P*. *T*. [17] respondimes *M*, *P*. [18] fait *M*, *Q*. [19] son *M*, *P*.

after Robert presented and therefore to us alone is an action now given. And since we have defeated your presentations, and have laid the right of presenting in our person, we ask judgment and pray a writ to the bishop.

And they had a day on the octave of St. Michael, on which day :—

Scrope. There where he makes his descent from his common ancestor through Gilbert his father, we tell you that Gilbert his father through etc. brought his *quare impedit* against the same countess of the same advowson etc. in the court of our lord the King at Westminster before Sir Roger of Seyton on the octave of St. Michael in the fourth year of king Edward the First, and the plea was continued until the octave of St. John next following when the countess came by attachment and by the grand distress; and at that day etc. she recovered her presentation etc. against the said Gilbert and had a writ to the bishop *non obstante* etc. And of this we vouch the record if they wish to deny it. [We ask] judgment. And since the right of the advowson and of that presentation was by that recovery extinguished in the person of Gilbert your father and since you cannot be in a better position than he would be in were he alive, and since he would not be received if he were alive, we ask judgment whether you can demand anything through him.

Passeley. The king cannot be a party, for he does not claim this advowson as appendant to the crown, but he claims it as a strange purchaser, and he shows no specialty of that purchase. We ask judgment.

Scrope. You have waived that exception inasmuch as you replied to the presentations of the countess, and by that reply the plea could have taken its issue etc. as by saying [not] of full age when the countess presented Anthony of Bek, and thus you have pleaded higher. We ask judgment whether you can resort to the exception.

Herle. We claim always that the king was a strange purchaser, and showed no specialty ; and what [we] answered to the presentations of the countess was to defeat the title etc. and we say that the exception was then saved to us etc., and the court drove us to answer [the presentations].

Scrope. We have defeated every kind of possessory right by the recovery which the countess had against Gilbert your father, wherefore you cannot be a party with us to try this etc.

Westcote (*ad idem*). Vous avez pris vostre title de vostre commune auncestre descendaunt a vous com a parcenere et avez dit qe Robert de Yanewite tenaunt par la lei d'Engleterre del dreit sa femme qe fust vostre parcenere et[1] eyné[2] presenta Robert de Musegrave etc. par la resoun del premer torne et issint appent ore a vous a presenter par resoun del secounde torne. Sire, la vous dioms nous qe le presentement[3] Robert de Yanewyte fust par vertue de[4] la fyn et noun pas[5] par resoun de torne de parcenere[6]; qar la countesse qe fust partie a la fyn si presenta deux foitz devaunt[7]; et s'il eust porté son *quare impedit* vers la countesse il n'eust rien recoverée etc.

Herle.[8] Jugement si le roi[9] deit estre respoundu sauntz especiauté.

Scrop (*ut supra*).

Brabazon. S'il eust respoundu outre de gree vostre respouns liereit, mès si la court ly chaca ceo est un autre, (*quasi diceret*, Il pount resortir a lour excepcion[10]).

Herle. Ceo qe nous pledoms[11] ceo est[12] d'aver bref al evesqe et a ceo[13] la court nous chaca et donqes daymes[14] sauve a nous nostre excepcion et de ceo vouchoms record. Et quant nous fuymes ajournée si fuymes ajournée de mesme l'estat et unqore chalengeoms vostre respouns[15] com avant[16] et par[17] mesme la resoun.

Brabazon. Quant la court ajourna les parties ele lez[18] ajourna issint qe ceo q'est[19] a salver[20] serra sauvé; mès quant la partie mette avaunt excepcion al counte ou autre chose et prie la court qe benefice de sa excepcion ly seit sauvé, il ne[21] puet taunt avaunt pledere q'ele ne puet estre salvée etc.; mès quaunt vous pledez[22] outre et respoundistes a les presentementz Isabel etc. par my quel ple[23] il[24] puet aver pris issue simple[25] semble a eux[26] qe vous ne devez resortir.

Herle. Ceo fust pur aver bref al evesqe.

Brabazon. Après jugement rendu vous purriez aver fait[27] title et issint aver[28] bref al evesqe[29] qe adonqes ceo serroit tut a la court.

Et sur ceo vient *Johan de Stonore* et dit coment Hughe de Courtenay porta son *quare impedit* de mesme l'eglise vers cesti Thomas et dit

[1] *Om.* et *M*. [2] eynesse *C*. [3] *Ins.* de *M*, *P*. [4] *Om.* vertue de *T*. [5] *Om.* a presenter . . . noun pas *C*. [6] parcenerie *C*, *M*, *P*, *Q*, *T*. [7] avaunt *M*, *P*. [8] *Om. Herle B*, *Q*. [9] The word 'ne' is here inserted in *B* in a later hand. [10] respouns *T*. [11] pledames outre *M*, *P*, *T*. *Ins.* outre *C*. [12] fut *T*. [13] *Ins.* fere *T*. [14] deymes *C*, *M*, *Q*, *T*. [15] demostrance *C*, *T*; respouns demostr' *Q*. [16] *Om.* com avant *M*, *P*. [17] *For* com . . . par, *subs.* de *C*, *Q*, *T*, et *P*. [18] et eles *B*, ele lez *C*, *P*, *T*, eles *M*. [19] est *M*. *For* ceo q'est, *subs.* cest *Q*. [20] *Ins.* quantqe *Q*. [21] *Om.* ne *C*, *M*, *T*. [22] pledastes *M*, *P*, *T*. [23] respons *M*, *P*, *T*; *om.* plee *B*. [24] le plee *M*, *P*, *T*; *om.* il *C*, *Q*. [25] *Om.* simple *B*, *C*, *T*; *ins.* mès vostre excepcion feut vayn par quei il *M*, *P*. [26] *Om.* a eux *M*, *P*. [27] *Om.* fait *C*. [28] averietz *T*. [29] *Om.* Brabazon . . . evesqe *M*, *P*.

Westcote (in agreement). You have taken your title from your common ancestor with descent to you as a parcener, and you have said that Robert of Yanwait tenant by the law of England in right of his wife who was your elder parcener presented Robert of Musgrave etc. by reason of the first turn, and that so it now belongs to you to present by reason of the second turn. Sir, we tell you that the presentation by Robert of Yanwait was by virtue of the fine and not by reason of the turn in parcenery, for the countess who was a party to the fine presented twice previously ; and if he had brought his *quare impedit* against the countess he would have recovered nothing etc.

Herle. We ask judgment, whether the king ought to be answered without specialty.

Scrope (as above [1]).

Brabazon C.J.K.B. If he had replied further of his own will your answer would lie ; but if the court drove him to his reply that is another matter, (*as if to say*, Then they might resort to their exception).

Herle. What we plead[ed over was] to have a writ to the bishop ; and the court drove us to this ; and then we said ' saving to us our exception,' and of this we vouch the record. And when we were adjourned we were adjourned in the same state as then ; and still we claim [our] answer as before and for the same reason.

Brabazon C.J.K.B. When the court adjourned the parties it adjourned them so that what ought to be saved should be saved ; but when a party puts forward an exception to the count or something else and prays the court that the benefit of his exception may be saved to him, he cannot plead as before that which could not be saved etc.[2] ; and as you pleaded over and replied to the presentations of Isabel etc. whereby the plea could have taken a simple issue, it seems to [the court] that you ought not to resort to [your exception].

Herle. That plea was to enable us to have a writ to the bishop.

Brabazon C.J.K.B. After judgment rendered you could have made a title, and so have had a writ to the bishop, for that would then be entirely a matter for the court.

And upon this came *John of Stonore* and said that Hugh de Courtenay had brought his *quare impedit* concerning the same church against this

[1] See his second speech on p. 100.

[2] There is some obscurity here. The text seems to be corrupt; and the translation is doubtful.

coment le roi prist son title de purchaceour,[1] q'il dust aver eu de Isabel countesse etc. de qi Hughe prist son title com heir du sanke Isabel et pria qe la court ne alast point au jugement pur le roi ne q'il eust bref al evesqe, qe serroit a desheritaunce Hughe q'il ne put accioun devers le roi useer si noun a sa volenté.[2]

Toud.[3] Nous prioms jugement pur le roi; et nomement de ceo plee q'est parentre ly et T. de Hutwyte, qar de Hughe n'avoms qe[4] faire, qe qaunt q'il[5] vendra il serra resceu.

Berr.[6] Nous avoms veu v[7] breves estre porté cieynz de une avoweson d'une eglise[8] une foitz et un[9] recovery vers iij. Le quint ad recovery[10] vers ly issi q'il avoit bref al evesqe et nuyl des autres etc.

The Foot of the Fine above mentioned.[11]

Feet of Fines, Case 35, File 6, No. 26.

Hec est finalis concordia facta in curia domini regis apud Westmonasterium a die sancti Iohannis Baptiste in quindecim dies anno regni regis Edwardi filii regis Henrici nono coram Thoma de Weylond Waltero de Helyun Iohanne de Louetot Rogero de Leyc' et Willelmo de Burnton iusticiariis et aliis domini regis fidelibus tunc ibi presentibus Inter Robertum de Yauenwyth et Walterum de Twynham et Isabellam uxorem eius querentes per Alanum de Twynham positum in loco ipsius Roberti ad lucrandum uel perdendum et Isabellam de Fortibus comitissam Albe Marlie et Deuonie deforciantem per Simonem de Tappelowe positum loco suo ad lucrandum uel perdendum de aduocacione ecclesie de Brigham unde placitum conuencionis summonitum fuit inter eos in eadem curia scilicet quod predicta comitissa concessit pro se et heredibus suis quod quamcito predicta ecclesia uacauerit predictus Robertus presentet clericum suum ad eandem ecclesiam si idem Robertus tunc superstes fuerit et si idem Robertus tunc non superstes fuerit tunc predicti Walterus et Isabella uel heredes ipsius Isabelle presentent clericum suum ad eandem ecclesiam racione quod ius patronatus eiusdem ecclesie erat Alicie quondam uxoris ipsius Roberti et matris predicte Isabelle uxoris predicti Walteri cuius heres ipsa est absque contradiccione uel impedimento ipsius comitisse uel heredum suorum Et pro hac concessione fine et concordia predicti Robertus Walterus et Isabella uxor eius concesserunt pro se et heredibus ipsius Isabelle quod cum contigeret predictam ecclesiam uacare

[1] purchace *M*, *P*, *Q*. [2] *Om.* si noun a sa volenté *T*. [3] *Scrop M*, *P*. [4] pas a *M*, *P*. [5] il *P*, *T*. [6] In place of this speech, *M* has :—Nous avoms veu ceinz un bref porté de avoweson de une eglise une foiz vers iij issint qe il ne recoveri mie etc. e l'un avoit bref al evesque e nul des autres etc. ; *Sim. P*. [7] *Om.* v *B*. [8] *Ins.* a *C*. [9] *Ins.* ad *C*, *Q*, *T*. [10] *Om.* le . . . recovery *B*, *T*. [11] The Record of the case of *Rex* v. *Hothwait* has already been printed, see p. 96 *note* 1 above. The following is the text of the fine mentioned in the report.

Thomas ; and he said that the king made his title as on a purchase, which he claimed to have had from Isabel the countess etc.; and Hugh made his title as heir of the blood of Isabel ; and *John of Stonore* prayed that the court should not go to judgment for the king, and that he should not have a writ to the bishop which would be to the disinheritance of Hugh, for he could not use an action against the king save at the king's pleasure.

Toudeby. We pray judgment for the king, that is to say, on the plea which is between him and Thomas of Hothwait, for with Hugh we have nothing to do, for when he comes he will be received.

Bereford C.J. We[1] have seen five writs brought here at once concerning the advowson of a church ; and one demandant recovered against the [four]. The fifth recovered against him, so that he had a writ to the bishop ; and none of the others etc.

Translation of the Foot of the Fine.[2]

For the reference, see opposite.

This is the final concord made in the court of the lord king at Westminster on the quindene[3] of St. John the Baptist in the ninth year of the reign of king Edward the son of king Henry before Thomas of Weylond Walter of Helyun John of Lovetot Roger of Leicester and William of Burnton justices and other faithful men of the lord king then and there present Between Robert of Yauenwyth and Walter of Twynham and Isabel his wife plaintiffs by Alan of Twynham put in the place of him the said Robert to gain or to lose and Isabel de Forz countess d'Aumale and of Devon deforciant by Simon of Tappelowe put in her place to gain or to lose of the advowson of the church of Brigham whereon a plea of covenant was summoned between them in the same court, that is to say, that the aforesaid countess granted for herself and her heirs that as soon as ever the aforesaid church should become vacant, the aforesaid Robert should present his clerk to the same church, if the same Robert should then be living, and if the same Robert should not then be living then the aforesaid Walter and Isabel or the heirs of her the said Isabel should present their clerk to the same church (for the reason that the right of patronage of the same church belonged to Alice sometime the wife of him the said Robert and the mother of the aforesaid Isabel the wife of the aforesaid Walter whose heiress she is) without contradiction or let of her the said countess or her heirs. And for this grant fine and concord the aforesaid Robert Walter and Isabel his wife granted for themselves and the heirs of her the said Isabel that when the aforesaid church should chance to be vacant after the death or cession of the clerk who

[1] The meaning of this speech is doubtful. It will be noticed that the manuscripts disagree in text.

[2] See note 11 opposite.

[3] 8 July 1281.

The Foot of the Fine—*continued.*

post mortem uel cessionem clerici qui ad presentacionem ipsius Roberti uel ipsorum Walteri et Isabelle siue heredum ipsius Isabelle ad eandem ecclesiam fuerit admissus et institutus predicta comitissa uel heredes sui presentent clericum suum ad eandem ecclesiam absque contradiccione uel impedimento ipsorum Roberti Walteri et Isabelle uel heredum ipsius Isabelle ita quod cum contigerit predictam ecclesiam uacare post mortem uel cessionem clerici qui ad presentacionem ipsius comitisse uel heredum suorum ad eandem ecclesiam fuerit admissus et institutus predictus Robertus presentet clericum suum ad eandem ecclesiam si idem Robertus tunc superstes fuerit. Et si non superstes fuerit predicti Walterus et Isabella uel heredes ipsius Isabelle presentent clericum suum ad eandem ecclesiam Et sic predictus Robertus tota uita sua et post mortem predicti Roberti Walterus et Isabella et heredes ipsius Isabelle et predicta comitissa et heredes sui alternatim et successiue presentabunt clericos suos ad eandem ecclesiam inperpetuum.

28. THE ABBOT OF ABINGDON *v.* BYSSHOP.

I.[1]

Replegiare, ou il avoua su le seingnur en soun soil demene pur damage fesaunt. Et ceus qe avouerent furent les tenauntz le pleintif qe aveynt comune en mesme le lew, ou le pleintif demaunda jugement si les tenauntz sur lor seignur purra etc. en soun soil demene, ou les defendaunts diseient qe cest fut lor comune severel saunz ceo qe le pleintif unques comuna par reson de sa seignurie. Et alii econtra *ut patet in fine.*

L'abbé de Abyngdone porta son *replegiare* devers R. J. et autres etc. et counta qe atort pristrent ses avers en Brademore.

Herle avowa pur R. et J. et les autres et pur asqunz de Abyndone par la resoun qe R. J. *ut supra* ount commune en Brademore et pur ceo q'il troverent les bestes l'abbé de N. et S. qe sount ij viles[2] qe point ne deivent illoqes communer si les pristrent il, com bien lour lust, en lour commune damage feisant ; et issi avowe il etc.

Toud. Vous avetz bien entendu coment il avowent[3] ceste prise etc. Sire, l'abbé vous[4] dit q'il est seignur de la ville de Abyndone et de Brademore ou la prise fust faite, et cel lew[5] si est[6] le soille l'abbé, et il ount conu q'il n'ount mye qe commune illoeqes. Jugement s'il puissent sur luy q'est seignur destresce avower.

[1] From *B* collated with *G* and *M*. The headnote is from *G*. [2] *Om.* qe . . . viles *G, M*. These words are interlineated in *B*. [3] unt avouwé *G, M*. [4] *Ins.* respont a ceste avower et *M*. [5] *Om.* et cel lew *G, M*. [6] *Om.* si est, *Ins.* en *M*.

Translation of the Foot of the Fine—*continued.*

on the presentation of him the said Robert or of them the said Walter and Isabel or the heirs of her the said Isabel shall have been admitted and instituted to the same church, the aforesaid countess or her heirs should present their clerk to the same church without contradiction or let of them the said Robert Walter and Isabel or the heirs of her the said Isabel so that when the aforesaid church shall chance to be vacant after the death or cession of the clerk who on the presentation of her the said countess or her heirs shall have been admitted and instituted to the same church the aforesaid Robert should present his clerk to the same church if the same Robert should then be living and if he should not then be living the aforesaid Walter and Isabel or the heirs of her the said Isabel should present their clerk to the same church. And so the aforesaid Robert in all his lifetime, and after the death of the aforesaid Robert Walter and Isabel and the heirs of her the said Isabel and the aforesaid countess and her heirs alternately and successively will present their clerks to the same church forever.

28. THE ABBOT OF ABINGDON *v.* BYSSHOP.

I.

Replevin. An avowry was made upon a lord in his own soil for damage feasant. And those who avowed were the tenants of the plaintiff, who had common in the same place. The plaintiff asked judgment whether the tenants could avow upon their lord in his own soil; and the defendants said it was their several common in which the plaintiff had never commoned by reason of lordship; and the plaintiff to the contrary (as appears at the end of the report).

The abbot of Abingdon brought his *replegiari* against Richard Bischop and others etc. and counted that they wrongfully took his beasts in Brademore.

Herle avowed for Richard and John and the others and for certain men of Abingdon for the reason that Richard, John etc. (as above) have common in Brademore; and because they found the beasts of the abbot from [Northcourt] and [Shippon] two vills which should not common there, they took the beasts, as well they might, damage feasant in their common; and so they avow etc.

Toudeby. You have well heard how they avow this taking etc. Sir, the abbot tells you that he is lord of the town of Abingdon and of Brademore where the seizure was made; and this place is the soil of the abbot; and they have acknowledged that they have only common there. We ask judgment whether they can upon him who is the lord avow the distress.

Scrop. Nous vous[1] dioms qe les bestes de N. et S. ne se deyvent mye communer en B. Conisez ceo adeprimes.

Pass. Conissez qe nous sumes seignurs et qe le soil soit a nous.

Hedon. Nous n'avoms[2] mester a ceo conustre.

Berr. Si vous[3] le dedites pas, la courte le tient a[4] granté.

Toud. Nous sumes seignurs etc.[5] et il ount conu *ut supra.* Jugement.

Pass. Nous, qe sumes seignurs de dreit[6] nous[7] devoms pestre en nostre soil demene. Jugement s'il puissent sur nous etc.

Toud. (*ad idem*). Il put agister de commune dreit son soil demene, et par taunt pestre de ses bestes demene ; par quei nous demaundoms jugement si eux com communers puissent[8] avower saunz ceo q'il moustrent especiauté, par quei il nous puissent del pestre ouster.

Herle. Sire, nous vous dioms qe nous avoms eu et usé cele commune pus le temps dount etc.[9] saunz ceo qe l'abbé unqes y[10] pust ou agista par resoun de seignurie. Prest etc.

Ad alium diem Pass. Autrefoith vous deismes nous et unqore dioms qe l'abbé est seignur et le soil[11] a luy[12] ; et ceo qe[13] R. J. etc. *ut supra* tenent en mesme la ville, si tenent il del abbé a quel tenement cele commune est appendaunt. Jugement s'il qe sount nos tenauntz pussent sur nous qe sumes seignurs avower.

Scrop. Sire, autrefoiz respondimes nous et unqore fesoms qe l'abbé unqes ne put ne agista par resoun de sa seignurie, et qe nous avoms eu et usé cele commune com nostre several pus temps de memore saunz ceo qe l'abbé y pust par resoun de sa seignurie.

Ber. Vous vous ponet[14] tut sour ceo q'il ne put etc. par resoun de sa seignurye et par tant ponet[14] tut vostre respounse, par quei nous voloms savoir s'il puyst ou noun.

(Et sur ceo isserent d'emparler.)

Ad alium diem Scrop rehercea tote la parole *ut supra,* et dit qe l'abbé unqes par resoun de seignurie ne y pust ne agista ; qar nous vous dioms qe l'abbé purchacea ij mies de ij de ses tenauntz en mesme la ville et cele commune de Brademore[15] a les ij mies sount apurtenaunt,[16] les queux l'abbé avoit purchacé, issy qe pus[17] cel purchace si ad l'abbé

[1] *Om.* vous *M.* [2] *Ins.* my *G.* [3] *Ins.* ne *G.* [4] tendra *G.* [5] *Om.* et qe . . . seignurs etc. *M.* [6] *Ins.* si *G, M.* [7] *Ins.* ne *G, M.* [8] *Ins.* sur nous *M.* [9] *Ins.* ensemblement ove les autres nomez et ascuns des altres de la ville de A. *M.* [10] il *G, M.* [11] *Ins.* est etc. *M.* [12] *Om.* a lui *M.* [13] *Om.* ceo qe *M.* [14] *sic G,* powetz *B,* pernez *M.* [15] *Ins.* appendaunt *M.* [16] *Om.* sount appurtenaunt *G, M. Ins.* avaunt *G, M.* [17] *Om.* pus *B, G.*

Scrope. We tell you that the beasts from Northcourt and Shippon ought not to common in Brademore. Acknowledge this first.

Passeley. Acknowledge that we are the lord, and that the soil is ours.

Hedon. We have no need to acknowledge this.

Bereford C.J. If you do not deny it, the court will take it for granted.

Toudeby. We are the lord etc., and they have acknowledged (as above). We ask judgment.

Passeley. We who are the lord as of right ought to have pasture in our own soil. We ask judgment whether they can avow upon us etc.

Toudeby (on the same side). The lord can by common right agist his own soil, and therefore pasture it with his own beasts. Therefore we ask judgment whether they as commoners can avow without showing specialty, by which they can oust us from pasturing it.

Herle. Sir, we tell you that we have had and used this common from the time whereof there is no memory, without the abbot ever having pastured or agisted there by reason of lordship. Ready are we etc.

(On another day) *Passeley.* Heretofore we told you and we still tell you that the abbot is lord, and the soil is his; and that which Richard, John etc. (as above) hold in the same vill, they hold of the abbot, and to their tenements this common is appendant. We ask judgment whether they who are our tenants can avow upon us who are the lord.

Scrope. Sir, heretofore we answered, and we still answer that the abbot never pastured nor agisted his beasts by reason of his lordship, and that we have had and used this common as our several since the time of legal memory, without the abbot having pastured it by reason of his lordship.

Bereford C.J. You take your stand [1] entirely on this, that he did not pasture etc. by reason of his lordship, and so on that you must base your reply entirely. Therefore we wish to know whether he pastured etc. or not.

(And upon this they went out to imparl.)

Another day *Scrope* rehearsed the whole cause (as above) and said that the abbot never by reason of lordship pastured or agisted beasts there, for we tell you that the abbot purchased two messuages from two of his tenants in the same vill and that common at Brademore is appurtenant to the two messuages which the abbot had purchased, so that after this purchase the abbot had as a commoner there common

[1] The word 'pouetz' in the MS. seems to be an error for 'ponetz' or perhaps, as in *G* and *M*, for 'pernetz.'

com communer illoeqes commune par resoun de son purchace, nent par resoun de seignurie, qe avant cel purchace unqes ne y pust ; par quei cel estat il[1] ad[2] com communer. Jugement si nous ne purroms[3] avower faire des bestes de N. et S. les queux villes ne s'entrecommunent point.

Ston. Il ount conu qe nous avoms commune puys le temps de cel purchace, et dient qe nient par resoun de seignurie, eynz com appendaunt par resoun de nostre purchace, et de cele conisaunce prioms vos recordes.[4] Et qe nous avoms peu par resoun de seignurie jeo vous moustre ; qe jeo pose qe le seignur purchasast le demene[5] de son tenaunt qe tient de luy par certeynz services par quei[6] mesme les services qe sount[7] regardantz a la seignurie issaunt de mesme les tenementz sount[8] esteinz par resoun de son purchace, auxi dioms nous de ceste part[9] la ou le seignur ad purchacé tenementz a quei la commune est appendaunt et il ount conu qe nous avoms commune[10] par resoun de nostre purchace du soille, si est cele commune naturelement esteynt auxi com appendaunt, par quei par lour conisaunce demene si demurt nostre dreit[11] de pestre par resoun de seignurie. Jugement s'il puissent avower.

Toud. (*ad idem*). Seignur en son soil demene ne put ne ne doit communer com appendaunt, eynz pestre[12] com seignur,[13] qe jeo pose qe l'abbé après ceo purchace out esté destreint, et il portast l'assise, il n'averoit point l'assise *de communa pasture* nel[14] *quod permittat*, eynz averoit *de libero tenemento suo*, dount piert il bien q'il ne put avoir commune appendaunt, *ergo* par resoun de seignurie et il[15] ount conu qe nous avoms illoeqes communé et nous ne le poumes aver[16] com appendaunt.[17] Jugement *ergo*[18] etc.

Ad idem. Si ceux qe sount nos tenauntz chargassent nostre soil nous le deschargeroms par le *quo iure, ergo* par resoun de seignurie, et nent par resoun de purchace.

Ad alium diem Toud. Sire, la ou il dient qe nous ne pumes unqes par resoun de seignurie[19] avant nostre purchace de ij meez, a qi la commune est appendaunt, mès pus, si dient il etc.[20] Sire, la nous vous dioms qe nous pusums avant cel purchace auxi bien com après et tut temps etc. Prest etc.

Et alii econtra.

[1] q'il *G, M.* [2] *Ins.* est *G, M.* [3] pussoms *G, M.* [4] vous recorder *M.* [5] doun *M.* [6] *Om.* par quei, *Ins.* si sount *M.* [7] *Om.* qe sount *M.* [8] *Om.* sount *M.* [9] *Ins.* qe *M.* [10] *Ins.* dont *M.* [11] estor' *G, M.* [12] estre *G.* [13] *Ins.* et ceo vous proverai *M.* [14] ne le *G, M.* [15] *Om.* il *G.* [16] *For* nous . . . aver, *subs.* par nos resouns nent *G, M.* [17] *Ins.* ergo etc. *G, M.* [18] *Om.* ergo *G, M.* [19] *Om.* par . . . seignurie *M.* [20] *Ins.* communerent nent par resoun de seignurye *M.*

by reason of his purchase, and not by reason of his lordship ; for before that purchase he never pastured there. Therefore that estate has he as a commoner. We ask judgment whether we cannot make an avowry on beasts from Northcourt and Shippon which vills do not intercommon with us.

Stonore. They have acknowledged that we have had common since the time of that purchase, and they say that we have it not by reason of lordship, but as appendant by reason of our purchase, and this acknowledgment we pray you to record. And that we have pastured by reason of lordship I will show you ; for suppose that the lord purchase the demesne of his tenant who holds of him by certain services, thereby the same services which are regardant to the lordship, issuing out of the same tenements, are extinguished by reason of his purchase ; so also we say in this case, where the lord has purchased tenements to which the common is appendant ; and they have acknowledged that we have common, therefore by reason of our purchase of the soil, this common as common appendant is naturally extinguished, and therefore by their own acknowledgment our right of pasture rests in us by reason of lordship. We ask judgment whether they can avow.

Toudeby (on the same side). Sir, in his own soil a lord cannot and ought not to have common as appendant, but he ought to have pasture as lord ; for suppose that the abbot after this purchase had been distrained, and he brought the assize, he would not have the assize of common of pasture nor the *quod permittat*, but he would have the assize *de libero tenemento suo*. Therefore it appears clearly that he cannot have common appendant, therefore [he has pasture] by reason of lordship. And they have acknowledged that we have common there ; and as we cannot have it as common appendant, therefore etc. We ask judgment.

Similarly, if those who are our tenants were to charge our soil, we would discharge it by the *quo iure* ; therefore we have pasture by reason of lordship and not by reason of purchase.

(On another day) *Toudeby*. Sir, whereas they say that we never pastured by reason of lordship before our purchase of the two messuages, to which common is appendant, but that we pastured afterwards, as they say etc., we tell you that we pastured as well before as after the purchase, and have always pastured etc. Ready etc.

And the others to the contrary.

II.[1]

Replegiare, ou les communers d'une ville pristrent les avers le seignour du soil etc. qe furent chacez d'un autre ville etc., ou les ij villes ne s'entrecommunerent point.

Richard[2] Bisschop et autres deux furent attachéz a respoundre al abbé de Abingdon', pur quey il avoint atort pris ses avers.

Scrop avowa la prise etc. et par la resoun qe Richard[2] et plusours autres unt commune de pasture en la more de Abingdon' dount le lieu etc. en est[3] appurtenaunt a lour fraunc tenement en Abingdon'. Et pur ceo q'il troverent les avers des quex il se pleint enchacez de la ville de Teverton[4] a[5] la more avauntdit q'est lour commune[6] ou il ne doit pas de pasture communer et pessaunt[7] lour commune. Et issint les pristrent il com en lour commune damage fesaunt com bien lour lust.[8]

Westcot. La ou il avowent lour prise com communers pur damage fesaunt en lour commune, Sire, nous vous dioms qe l'abbé est seignour du soil et del lieu ou la prise fut fet et Richard Bisschop' et les autres sont[9] ses tenauntz ; et demaundoms jugement del houre q'il est seignour du soil[10] a qi par resoun de seignorie agistement est sauvé, si ceux qe ne sont qe commoners pur damage fete[11] en soil demene pussent destresce avower.

Scrop. Donqe grauntez vous qe nous avoms illoeqes commune et qe les avers furent enchacez[12] (*ut supra*).

Et furent chacez du court a graunter ceo la.

Scrop. Et nous jugement del houre qe vous aviez graunté qe c'est nostre commune et nous communers[13] a queux de commune dreit list a destreindre pur damage fet en lour commune, ne[14] vous ne poez dire qe vous seiez un des communers ne qe les avers sont des villes q'illuqes deivent commune aver si par resoun de seignorie ou vous ne moustrez especialté qe defait commune dreit nous pussez de ceste avowere ouster.

West. Donqe grauntez bien qe l'abbé est seignour et vous tenauntz et del houre qe de commune dreit bien list a chescun seignour[15] pestre et fere agistement en son soil demene ne vous ne liez vostre avowere par especialté de nous ne de nul de noz predecessours par vertue de quel especialté vous pussez avowere countre commune dreit, jugement etc.

[1] From *T* collated with *C* and *Q*. The reports in *C* and *Q* are in almost the same words, but there is much less agreement between them and the report in *T*. Some minor variations, for want of space, are not noted in the following footnotes. [2] Robert *C*, *Q*. [3] *Ins.* parcel *C*, parcel et *Q*. [4] Chemerton' *C*, *Q*. [5] en *T*. [6] *Ins.* de pasture *C*, *Q*. [7] *Om.* et pessaunt, *ins.* en *C*, *Q*. [8] *Om.* com en . . . lust *C*, *Q*. [9] *For* et Richard . . . sont, *subs.* et ceux qe avowent ne sunt qe *C*, *Q*. [10] *Om.* du soil *C*, *Q*. [11] *Om.* pur damage fete *C*, *Q*. [12] chacez *C*, *Q*. [13] *Om.* et nous communers *C*, *Q*. [14] *Om.* fet en lour commune, ne *C*, *Q*. [15] *Ins.* de *C*, *Q*.

II.

Replevin. The commoners of a vill took the beasts of the lord of the soil etc. which had been driven there from another vill etc. to a place where the two vills did not intercommon.

Richard Bisshop and two others were attached to answer the abbot of Abingdon, wherefore they wrongfully took his beasts.

Scrope avowed the taking etc. for the reason that one Richard and many others have common of pasture in the moor of Abingdon, whereof the place etc. is parcel and appurtenant to their frank tenements in Abingdon, and because they found the beasts of which he complains driven from the vill of [Northcourt] on to the moor aforesaid, which is their common where the abbot ought not to have common of pasture, and pasturing their common there; and so they took the beasts damage feasant in their common as well they might.

Westcote. Sir, there where they avow their seizure as commoners for damage feasant in their common, we tell you that the abbot is lord of the soil and of the place where the seizure was made, and Richard Bisshop and the others are his tenants. We ask judgment, seeing that he is the lord of the soil, and by reason of his lordship agistment is reserved to him, whether the men who are commoners only can avow any distress for damage feasant in his own soil.

Scrope. Then you grant that we have common there and that the beasts were driven etc. (as above).

And they were driven to this admission by the court.

Scrope. And seeing that you have granted that this is our common and we are commoners for whom it is lawful of common right to distrain for damage feasant in their common, and that you cannot say that you are one of the commoners, or that the beasts are from the vills which ought to have common there, we ask judgment whether, by reason of lordship, where you show no specialty in defeasance of common right, you can oust us from this avowry.

Westcote. Then you grant that the abbot is lord and that you are tenants, and since of common right it is lawful for every lord to pasture and agist his own soil, and since you do not lay your avowry by specialty from us or any of our predecessors, by virtue of which specialty you might avow against common right, we ask judgment etc.

Herle. Richard et les autres etc. de la ville de Abingdon' unt eu et usé cele commune com appurtenaunt a lour fraunc tenementz a Abingdon' du temps dount il n'y ad memoire sanz ceo qe l'abbé ou nul de ses predecessours illoeqes unqes i pout ou agista par resoun de sa seignorie.[1] Prest etc.

West. Vous grauntez bien[2] qe l'abbé i pust, mès vous voillez dire qe nient par resoun de sa seignorie.

Scrop. Vous nous voillez ouster de nostre avowere qe nous avoms fete par resoun qe vous fustes[3] seignour et aviez puré.[4] Et la dioms nous qe nul etc. par resoun de seignorie ne poit etc. ne vous[5] unqes ne pustes par resoun de seignorie ne agistates. Et issi sumes nous a meintener nostre avowere e a defere[6] vostre respouns.

Hervy. Jeo vey bien qe[7] vous pledez covertement, car jeo entenk[8] q'il y ad un clemir[9] en cele parole ' pessa par resoun de seignorie,' par quey si vous voillez estre a issue il covient qe vous descloez cele parole et qe vous pledez plus overtement.

Scrop. L'abbé si purchacea d'un des communers un mies et une bové de terre a quey commune est appendaunt en la ville de Abingdon'. Et n'entendoms mie qe par resoun de seignorie[10] des bestes qe sont couchantz et levaunz en Teverton q'est un autre ville q'il[11] ne deivent communer ne de nostre avowere q'est de commune dreit[12] nous pusse reboter[13] et nomement la ou la commune ne se estent fors a ceux de Abingdon'.[14]

Ston. Par le purchas qe l'abbé fit du tenement a quey la commune fut appendaunt si fut la commune[15] esteint et ceo par resoun de sa seignorie.[16] Et del houre qe vous lui conissez le dreit en taunt com vous lui grauntez la seignorie et la seisine en taunt com vous lui grauntez le pestre,[17] jugement si vous qe estes communers en cele lieu destresce pussez avower.

Toud. Si l'abbé soit deforcé, il avera l'assise *de libero tenemento* et non *de communa pasture.* Et hoc *racione dominii sui,* donqe piert il bien q'il poit pestre et agister.

Herle. Vous ne pledez pas a ceo, qe nous avoms dit qe le lieu etc. est le several ceux de Abingdon', et en severalté l'ount tenu[18] du temps etc.[19]

[1] *Om.* par . . . seignorie *C, Q.* [2] *Ins.* en teysant *C, Q.* [3] estes *C, Q.* [4] peu *C, Q.* [5] *Om.* nul etc. . . . ne vous *C, Q.* [6] destr' *T,* defere *C,* defaire *Q.* [7] *Om.* Jeo . . . qe *C, Q.* [8] vey bien *C, Q.* [9] *For* un clemir, *subs.* encheson a descloer *C, Q.* [10] *Om.* de seignorie *C, Q.* [11] *Om.* en Teverton . . . q'il *C, Q. Ins.* par reson de sa seignurye qe illeqes *C.* [12] *Om.* q'est . . . dreit *C, Q.* [13] oster *C, Q.* [14] *Om.* et nomement . . . Abingdon' *C, Q.* [15] *Om.* si fut la commune *T.* [16] *Om.* et ceo . . . seignorie *C, Q.* [17] *For* le pestre *subs.* q'il peust *C,* qe nul pust *Q.* [18] *For* etc. est. . . . tenu *subs.* touz lez tenauntz de A. en severalté unt tenue etc. *C, Q.* [19] *Om.* du temps etc. *C, Q.*

Herle. Richard and the other men of the vill of Abingdon have had and used this common as appurtenant to their frank tenements in Abingdon from a time whereof there is no memory, without the Abbot or any of his predecessors ever having pastured or agisted there by reason of lordship. Ready etc.

Westcote. You grant that the abbot pastured there, but you mean to say that it was not by reason of his lordship.

Scrope. You wish to oust us from the avowry which we have made for the reason that you are lord, and have pastured there. We tell you that none [of your predecessors] by reason of lordship have pastured there nor have you ever pastured nor agisted there by reason of lordship; and thus we are [ready] to maintain our avowry and defeat your answer.

STANTON J.[1] I consider that you plead covertly, for I think that there is reason for explaining those words 'pastured by reason of lordship,' wherefore if you wish to be at issue on this plea, you must disclose the meaning of those words, and plead more openly.

Scrope. The abbot purchased from one of the commoners a messuage and a bovate of land to which this common is appendant in the vill of Abingdon, and we do not think that by reason of the ownership of beasts levant and couchant in [Northcourt] which is another vill they ought to common or that he can oust us from our avowry which is of common right; especially as the common extends only to the men of Abingdon.

Stonor. By the purchase which the abbot made of tenements to which common was appendant, the common was extinguished; and this is by reason of lordship. And seeing that you acknowledge the right in him inasmuch as you grant the lordship, and the seisin inasmuch as you grant to him that he has pasture there, we ask judgment whether you who are commoners in that place can avow the distress.

Toudeby. If the abbot be deforced he will have the assize *de libero tenemento*, and not *de communa pasture*: and that is by reason of his lordship; therefore it appears that he can agist and pasture the common.

Herle. You are not pleading on that; for we have said that the place etc. is the several of the men of Abingdon, and that they have held it in

[1] The text in *T* seems to be corrupt at this point. The translation follows the reading in *C* and *Q*.

issi qe nul seignour ne autre ne doit pestre ne agister ne communer fors ceux de la ville mesme. Prest etc.

West. Il chiet en descrecioun si le seignour doit etc. et nent en averement, del houre qe conu est du[1] court d'une part et d'autre nostre estat ; car jeo pose q'un homme ust purpris commune sanz title du droit et cele commune eust usé longetemps *non obstante* la seisine sur tiele purprise, l'abbé le oustreit[2] bien par le *Quo iure*, et ceo pur ceo q'il est seignour ; par ou il semble[3] q'il ne poit le seignour[4] forclore q'il ne poit ces bestes demene pestre et des[5] agistement fere a sa volunté.

Mall. (*ad idem*). En taunt com vous li aviez conu la seignorie et le pestre[6] vous lui aviez conu un dreit a nule chose costaunt[7] ne le poez restreindre ; car jeo pose qe mon ael eust en son temps ascuns tenementz a quei la commune est appendaunt et ascun homme en son temps ust ceste commune usé et auxi en temps mon pere ; quaunt le fraunctenement, a quey commune fut appendaunt, a moy est descendu jeo mettrai a la[8] commune mes bestes et useray la commune et a ceo fere par[9] ley nul homme ne me purra deveer[10] et ceo par resoun d'un dreit qe tut dys[11] demorra a mon ael et a mon pere par resoun du fraunctenement, dount il estoint seisiz a quei la commune fut appurtenaunt, auxi de ceo[12] par resoun de seignorie tut dys un dreit lui demorra coment qe[13] ceo dreit n'est[14] pas par aventure et[15] discontinuaunce de seisine vestu,[16] del houre q'il ad ore pué[17] et il est seignour, ceo dreit est ore vestu issi qe bien lui list de pestre et[18] d'agistement fere et autre profitz[19] par resoun de sa seignorie. Jugement etc.

Herle. Tut eust l'abbé illeqes peu com communer cele pestre ne lui doune title, q'il pusse pestre ne agister[20] par resoun de sa seignorie etc.

Scrop.[21] Chose dit de partie dount la partie ne poit la court acerter, la court a tiel dit ne doit nul foy doner ; mès le quel qe l'abbé poit[22] com seignour ou com communer ceo vient de quer ou de[23] la volenté l'abbé et qe ne poit estre averée, par quei[24] n'entendoms mie qe la court entendra vostre dit encountre vostre general conissaunce qe vous aviez fet de sa seignorie et del pestre des avers et encountre quel generalté

[1] en *C*, de *Q*. [2] *Ins.* de cel commune *C*, *Q*. [3] *For* il semble *subs.* par quei pert *C*, *Q*. [4] *Ins.* de ceo *C*, *Q*. [5] de autres *C* ; d'autrepart *Q*. [6] *Ins.* en taunt *C*, *Q*. [7] *For* a nulé . . . costaunt *subs.* si general encountre quel dreit nul chose qe est esteant *C*, *Q*. [8] ma *C*, *Q*. [9] de *C*, *Q*. [10] destourber *C*, *Q*. [11] *Om.* tut dys *C*, *Q*. [12] *For* de ceo *subs.* par de ca *C*, *Q*. [13] *Ins.* ore *C*, *Q*. [14] ne fut *C*, *Q*. [15] *Om.* aventure et *C*, *Q*. [16] *For* vestu *subs.* le dreit se vesti *C*, *Q*. [17] peu *C*, *Q*. [18] *Om.* de pestre et *C*, *Q*. [19] *Om.* et autre profitz *C*, *Q*. [20] *Om.* par resoun . . . ne agister *C*, *Q*. [21] This speech for the lord is attributed to Passeley in *C*, *Q*. As *Scrop* appeared for the commoners in this case this speech is clearly wrongly attributed to him. [22] peust *C*, pust *Q*. [23] *For* vient . . . . ou de *subs.* vent d'enquere *Q*. [24] *Ins.* le court ne deit etc *C*, *Q*. In both these manuscripts this report here ends abruptly.

severalty from a time whereof etc. so that no lord nor any other person ought to pasture or agist it or to have common there, save the men of the same vill. Ready etc.

Westcote. It is a matter for the decision of the court etc. and not one of averment whether the lord ought etc. since our estate has on both sides been acknowledged by the court [1]; for suppose that a man had usurped common without a lawful title, and had used that common a long time. Notwithstanding the seisin by usurpation the abbot would oust him from that common by the *quo iure*, and this because he is the lord. Therefore it appears that the lord cannot be barred of this, that he can pasture the common with his own beasts and also agist it with others[2] at his pleasure.

Malberthorpe (in agreement). Inasmuch as you have acknowledged to him the lordship and the pasturing, you have acknowledged a general right from which nothing in the world can restrain him[3]; for suppose that my grandfather had in his day some tenements to which common was appendant, and some man in his day and also in the days of my father had used that common. When the frank tenement, to which the common is appendant, descended to me, I should put my beasts on my common, and I should use the common. In doing this no man lawfully could disturb me, and this would be in virtue of a right which always remained to my grandfather and my father by reason of the frank tenement, of which they were seised and to which common was appurtenant. So in this case a right by reason of his lordship has remained to the abbot throughout, even though this right by chance and discontinuance of seisin has not been vested in him; but seeing that he has now pastured, and that he is the lord, that right has now vested in him, so that it is quite lawful for him to pasture and agist there and make other profit by reason of his lordship. We ask judgment etc.

Herle. Although the abbot pastured there as a commoner that pasturing gives him no title, for he can neither pasture nor agist by reason of lordship etc.

Passeley.[4] The court ought to give no faith to a statement which is made by a party, and which the party cannot prove to the court. But whether the abbot pastured as lord or commoner is a question of the will and intention of the abbot which cannot be averred. Therefore we think that the court will not listen to your statement against the general acknowledgment which you have made concerning his lordship and the pasturing of the beasts, and against which general

[1] Possibly *C* gives the better reading. But the meaning of the passage is doubtful. [2] See note 5 opposite. [3] The translation here follows *C* and *Q*. [4] See note 21 opposite.

vous nel poez restreindre a nule chose especial dencost. Et d'autrepart vous foundez vous sur usage qe vous tenez en severauté etc. du temps etc. quele continuance est encountre commun dreit vers nous qe sumes seignour ne ne doune point de title si vous ne poez moustrer especiauté ou qe vous pussez dire, qe vous ussez enparké les avers l'abbé et tenu en severalté etc. et ceo ne poez dire. Jugement si de tiel continuaunce q'est encountre commune dreit encountre nous qe sumes etc. vous pussez title de dreit doner.

Herle. N'entendez vous mie qe seisine en due temps dount il ny ad memoire ne vaut a taunt com fait, par quey nous avoms moustré nostre especiauté ; et pur ceo moustretz a la court si vous quidez bien fere.

Ber. Tut vostre pleder si chiet sur usage d'une part et sur la seignorie d'autre part ; et pur ceo il covient qe vous soiez a un del usage etc. ; car jeo vy en le counté de War. qe le prior de Hospital etc. avoit un large pree. Après les feins fauchez et emportez si ne purra il en cele pree pestre nule manere des bestes nient plus qe le plus estraunge du pays, et ne mie pur ceo si est il seignour du pre.

Hervy le refert le point de la matire. Et pur ceo le grauntez ou le dediez, car autrement ne poez aver jugement etc.

III.[1]

Replegiare, ou lez communers avowerent sur le seygnur de soil pur damage fesaunt.

Richard de Bissop et autres furent somounez a respoundre al abbé de Abindone pur quei il pristerent cez avers en Brademore etc.

Scrop. avowa la prise par la resoun qe Richard e lez autres nomez en le bref ensemblement ove cérteyn gent de Abindone deyvent communer en cele place par resoun de lour franc tenementz en Abindone, la vynt l'abbé ov ces bestes de Nortone e de C. qe ne sount pas de la commune de Abindone en attreraunt la commune de Abindone a Nortone etc. ou il ne entrecommunerent pas. E issi pristerent il lez avers li abbé cum en lour commune damage fesaunt cum bien lour lust.

Toud. Sire, nous vous dioms qe l'abbé est seignur de Abindone ou ceste place de commune est, et seignur du soil ; e ceste gente cum il

[1] From *P.*

statement you cannot restrain him to any special collateral matter.[1] Moreover you rely upon a usage, that you hold in severalty etc. from a time etc.; [but] this continuance is against common right as regards us who are the lord, nor does it give a title unless you can show specialty or you can say that you had imparked the beasts of the abbot and that you held in severalty etc., and this you cannot say. We ask judgment whether from such continuance which is against common right you can give a title in the right against us who are etc.

Herle. Do you not think that seisin enjoyed from a time[2] whereof there is no memory is worth as much as a deed? and in this way we have shown our specialty; and therefore it is for you to show something to the court if you think it well to do so.

Bereford C.J. All your pleading turns on usage on one side, and lordship on the other; therefore you must be at one on the usage etc. For I have seen in the county of Warwick that the prior of the Hospital etc. had a large meadow, and after the hay had been cut and carried away he could not depasture any kind of beasts in that meadow, any more than the most complete stranger in that country; and for all this he is lord of the meadow.

Stanton J. recited the points of the case, and said:—Therefore grant it or deny it, for otherwise you cannot have judgment etc.

III.

A case of replevin, in which the commoners avowed upon the lord of the soil for damage feasant.

Richard Biscop and others were summoned to answer the abbot of Abingdon, wherefore they took his beasts in Brademore etc.

Scrope avowed the taking for the reason that Richard and the others named in the writ with certain people of Abingdon ought to have common in that place by reason of their frank tenements in Abingdon; and there the abbot came with his beasts from [Northcourt] and C. which are not of the common of Abingdon so attaching the common of Abingdon to Norton etc. where they did not intercommon. And so they took the beasts of the abbot as in their common damage feasant as lawfully they might.

Toudeby. Sir, we tell you that the abbot is lord of Abingdon, where this common is situate, and he is the lord of the soil, and these people

[1] The translation is conjectural.

[2] It is assumed that the words 'en due' are written in error for 'eu de.'

ount mesme conu ne sount qe communers en Brademore. E demaundoms jugement si communers sur nous qe sumes seygnur de nostre soil demene pussent avowere fere.

Herle. La cause de nostre avowere est pur ceo qe le leu ou les bestes vindrent n'est pas de la commune de Abindon', a quei il vous covent respondre ; par quei est issint ou noun ? qe nous par mi nostre avowere sumes actours.

Toud. A ceo n'avoms mester a respoundre ; qe nous vous dioms qe le soil est le nostre, e vous n'estes qe communer e par taunt nous vous oustoms de vostre avowere.

Ber. Il vous dit q'il est seignur de Abindone et vous soun tenaunt e tel profit qe vous pernez en cele place est par resoun del fraunc tenement qe vous de ly tenez en Abindone, e il seignur de mesme cel soil ; par quei il covent respoundre s'il soit issi ou noun.

Pass. L'abbé est seygnur de Abindone e seygnur de mesme le soil de Brademore, et put agister de foreyn bestez quel part qe eux vygnent. E demaundoms jugement del houre qe nous sumes seygnur si nos bestes demene quel part qe eux vignent ne pussoms en nostre soil demene pestre etc.

Ber. Est l'abbé seignur du soyl ou noun ? qe si vous ne le dediez la court le tendra a graunté.

Scrop. Nous ne dioms ; mès nous dioms qe Brademore est un place severale et commune a nous e a certeinz genz de Abindone a communer a totes maneres des bestes par mi tut l'an cum apendaunt a nostre fraunc tenement en Abindone saunz ceo qe l'abbé ou nul de seons ou de ces predecessours unqes pestrent ou agisterent. E demaundoms jugement depuis qe les ij villes ne se entrecommunent pas ove Habindone si nous qe sumes communers pur bestes qe sount de autri commune ne pussoms avower.

Pass. La ou il y ad un seignur de une commune c'est a sa volunté de communer ou de agister ; e coment qe le seygnur ad lessé de pestre par x aunz ou xx aunz ceo ne toud pas le seignur de pestre en soun soil demene.

Toud. De commune dreit list a chescun homme de pestre en soun soil demene s'il ne soit defet par especiauté. E il ount mesme conu qe le soil est le nostre e eux communers et rien ne mostrent qe nous ne pussoms pestre nostre soil demene. Jugement si eux en nostre soil demene ou nous sumes lour seignur sur nous pussent avower.

Scrop. Vous clamez de pestre par resoun qe vous estes seignur du soil. A ceo vous dioms nous qe nous e les autres communers e noz auncestres tut temps avoms peu saunz ceo qe l'abbé ou nul de ses

as they themselves have acknowledged are only commoners in Brademore. We ask judgment whether the commoners can make an avowry upon us who are lords of our own soil.

Herle. The reason of our avowry is because the place whence the beasts came is not of the common of Abingdon, and to this you must answer. Is it so, or is it not? for we by our avowry are the moving party.

Toudeby. To that we have no need to answer, for we tell you that the soil is ours, and you are commoners only; and by that we oust you from your avowry.

Bereford C.J. He tells you that he is lord of Abingdon and you are his tenants, and that such profit as you take in that place is by reason of the frank tenements which you hold of him in Abingdon, and that he is lord of the same soil. Therefore you must answer if this be so or not.

Passeley. The abbot is lord of Abingdon and lord of the soil of Brademore, and he can agist it with beasts from outside, from whereso-ever they may come. We ask judgment whether seeing that we are the lord we cannot pasture in our own soil our own beasts from where-soever they may come.

Bereford C.J. Is the abbot lord of the soil or not? If you do not deny it, the court will take it for granted that he is.

Scrope. We do not [deny it]; but we tell you that Brademore is a separate place and a common for ourselves and certain men of Abingdon for commoning with all manner of beasts throughout the year as appendant to our frank tenements in Abingdon, without the abbot or any of his men or his predecessors ever having pastured or agisted there. And we ask judgment, seeing that the two vills (whence the beasts come) do not intercommon with us in Abingdon, whether we who are commoners cannot avow for beasts which belong to another's common.

Passeley. Where there is a lord of a common, it is for him at his pleasure to have common or to agist there; and although the lord has ceased to pasture there for ten or twenty years, that fact does not deprive the lord of pasture in his own soil.

Toudeby. Of common right it is lawful for every man to pasture in his own soil, if there be no defeasance by specialty. And they themselves have acknowledged that the soil is ours, and that they are commoners; and they show nothing, for which we cannot pasture our own soil. We ask judgment whether they in our own soil where we are their lord can avow upon us.

Scrope. You claim to pasture, because you are lord of the soil. To that we tell you that we and the other commoners and our ancestors

predecessours par resoun de lour seygnurie unqes pustrent ou agistement fesoient. Prest etc.

Ber. Quei est ceo ? a dire, qe unqes ne ount pu ou agisté par resoun de lour seignurie ; mès volez vous le pays qe vous avez du temps dount il n'ad memore saunz ceo qe l'abbé ou nul de cez predecessours unqes ne pustrent ne agisterent.

Herle. Ceo manere de pleder avoms nous de eux ; q'il cleyment de pestre iloqes par resoun q'il sount seignurs du soil ; e issi par resoun de lour seignurie cleyment il a pestre. A ceo dioms nous qe unqes par resoun de sa seignurie unqes ne put ne agista. Prest etc.

Ber. Si unqes ne put ne agista en nul temps, mès vous avez eu commune en several del abbé e de ces predecessours du tenps dount il n'ad memore, de la seygnurie ne durray jeo mayle.

Scrop. Nous dioms qe l'abbé ad purchacé iij tenementz, mès il ad puis pu par resoun de appendaunce. Prest etc.

Hervi. Coment poez vous jugger la volunté del abbé, le quel il eyt usé par resoun de appendaunce ou vous avez conu q'il est mesme seignur du soil e issi par resoun de purchaz est l'apendaunce esteynte ?

Pass.[1] E demaundoms jugement, depuis q'il ount conu le soil estre le nostre e ount conu le pestre, s'il pussent dire qe nous avoms peu par resoun d'apendaunce ou l'apendaunce est esteinte.

Toud. (*ad idem*). Jeo pose qe le seignur soit desturbé de pestre soun soil demene il usera l'assise de novele disseisine *de libero tenemento suo* e recovera le soil. E demaundoms jugement del houre q'il recovera le soil si par resoun d'apendaunce pussez dire q'il eyt peu.

Scrop (*ut prius*).

Toud. Nous sumes ci en cas de ley ; qe nous vous dioms qe nous sumes seignur du soyl cum il ount mesme conu et qe nous avoms peu et eux noz tenaunz et communers en mesme le soyl. Jugement si communers sur nous qe sumes seygnur pussent il avower.

West. (*ad idem*). Si un homme ust purpris de la commune et l'abbé portast le *Quo iure* il deschargereit ben la commune. E del houre q'il la deschargereit cum soun soil demene meschef serroit s'il ne put pestre.

[1] *Om. Pass. P.*

have always pastured without the abbot or any of his predecessors ever having pastured or agisted there by reason of lordship. Ready etc.

Bereford C.J. What is this? that they have never pastured or agisted by reason of their lordship. But will you have a jury on this, that you have pastured there from time immemorial etc. without the abbot or any of his predecessors ever having pastured or agisted there?

Herle. This is the nature of the pleading which we have from them: that they claim to pasture there because they are lords of the soil, and so it is by reason of their lordship that they claim to pasture. To that we say they have never pastured or agisted there by reason of lordship. Ready etc.

Bereford C.J. If he never pastured nor agisted there at any time, but you have had common apart from the abbot and his predecessors from time immemorial, I would not give a halfpenny for the lordship.

Scrope. We say that the abbot has purchased three tenements; and since the purchase he has pastured there by reason of appendancy. Ready etc.

Stanton J. How can you judge the will of the abbot? whether (that is to say) he has or has not used the common by reason of appendancy, when you have acknowledged that he is himself lord of the soil; and thus by reason of the purchase the appendancy has been extinguished.

[*Pass.*] Since they have acknowledged the soil to be ours, and have acknowledged that we have pastured, we ask judgment whether they can say that we have pastured by reason of appendancy, when the appendancy is extinct.

Toudeby (on the same side). Suppose the lord be disturbed in pasturing his own soil, he will use the assize of novel disseisin *de libero tenemento* and he will recover the soil. Since he would recover the soil, we ask judgment whether you can say that he has pastured by reason of appendancy.

Scrope (as before).

Toudeby. We are here at a point of law; for we tell you that we are lord of the soil, as they have themselves acknowledged, and that we have pastured, and that they are our tenants and commoners in the same soil. We ask judgment whether commoners can avow upon us who are the lord.

Westcote (on the same side). If a man had encroached upon the common, and the abbot brought the *Quo iure*, it would free the common of the encroachment; and seeing that he would free it as his own soil, it would be a hardship if he could not pasture it.

Scrop. Sire, nous vous dioms qe avaunt le tens q'il purchasa lez iij mees unqes ne pustrent. Prest etc.

Pass. Sire, nous vous dioms qe avaunt le tenps du purchaz l'abbé et cez predecessours et puis le tenps en tut tenps ount pu. Prest etc.

Et alii econtra.

The Record of the Case.

De Banco Rolls, 4 Edw. II., Trinity (No. 187), r. 16, Berkshire.

Ricardus Bysshop' Iohannes de Colecote Iohannes Coles et Willelmus le Porter summoniti fuerunt ad respondendum abbati de Abyndon' de placito quare ceperunt aueria ipsius abbatis et ea iniuste detinuerunt contra uadium et plegios etc. Et unde idem abbas per Willelmum de Coleshull' attornatum suum queritur quod predicti Ricardus et alii die Iouis in festo sancti Barnabe apostoli anno regni domini regis nunc tercio in uilla de Abyndon' in quodam loco qui uocatur Brademor ceperunt tres boues ipsius abbatis et ea iniuste detinuerunt contra uadium et plegios etc. quousque etc. unde dicit quod deterioratus est et dampnum habet ad ualenciam uiginti librarum et inde producit sectam etc.

Et Ricardus et alii per Willelmum de Merston' attornatum predictorum Ricardi Iohannis Coles et Willelmi le Porter ueniunt et defendunt uim et iniuriam quando etc. et bene aduocant predictam capcionem et iuste etc. quia dicunt quod ipsi et quidam alii tenentes in uilla de Abyndon' habent communam pasturam in predicto loco de Brademor tancquam pertinentem ad tenementa sua predicta et quia predictus abbas fugare fecit duos de predictis bobus de manerio ipsius abbatis de Northcote et unum bouem de manerio eiusdem abbatis de Shipene usque predictam pasturam ibidem depascendos etc. que quidem uille de Northcote et Shipene in predicto loco non comunicant etc. ceperunt ipsi predicta aueria in eodem loco herbam suam depascencia et dampnum faciencia sicut eis bene licuit etc.

Et abbas dicit quod predicti Ricardus et alii predictam capcionem super ipsum iustam aduocare non possunt in hac parte etc. quia dicit quod ipse est dominus uille de Abyndon' et predicti Ricardus et alii sunt tenentes ipsius abbatis de tenementis suis que tenent in eadem uilla ad que asserunt predictam communam pertinere ex quo sequitur quod predicta communa pasture est proprium solum ipsius abbatis ita quod de iure communi bene licet eidem abbati ibidem cum aueriis suis a quocunque loco uenientibus depascere uel aliena aueria in eadem pastura agistare etc. unde cum predicti Ricardus et alii nullum factum speciale ostendunt de ipso abbate uel de aliquo predecessorum suorum per quod liquere possit curie quod idem abbas sit preclusus de pastura sua ibidem habenda, petit iudicium.

Scrope. Sir, we tell you that before the time when he purchased the three messuages, the abbots never pastured there. Ready etc.

Passeley. Sir, we tell you that before the time of the purchase and afterwards the abbot and his predecessors have always pastured. Ready etc.

And the others to the contrary.

Translation of the Record.

For the reference, see opposite.

Richard Bysshop, John of Colecote, John Coles and William le Porter were summoned to answer the abbot of Abingdon on a plea wherefore they took the beasts of him the said abbot and wrongfully detained them against gage and pledges etc. And whereupon the abbot by William of Coleshull his attorney complains that the aforesaid Richard and the others on Thursday [1] the feast of St. Barnabas the apostle in the third year of the reign of the lord king who now is in the town of Abingdon in a certain place which is called Brademore took three oxen belonging to him the said abbot and wrongfully detained them against gage and pledges etc. until etc. Whereupon he says that he is injured and has damage to the value of twenty pounds; and thereof he brings suit etc.

And Richard and the others come by William of Merston the attorney of the aforesaid Richard, John Coles and William le Porter, and deny tort and force when etc. And they avow the aforesaid taking as good and lawful etc. because they say that they and certain other tenants in the town of Abingdon have common of pasture in the aforesaid place of Brademore as appurtenant to their tenements aforesaid; and because the aforesaid abbot caused two of the aforesaid oxen to be driven from the manor of him the said abbot at Northcourt[2] and one ox from the manor of the same abbot at Shippon to the aforesaid pasture there to feed etc. which vills of Northcourt and Shippon do not common in the aforesaid place, they took the aforesaid beasts in the same place pasturing their herbage and damage feasant, as well they might.

And the abbot says that the aforesaid Richard and the others cannot avow the aforesaid taking upon him the abbot as lawful in this behalf etc. because he says that he is lord of the town of Abingdon and the aforesaid Richard and the others are tenants of him the said abbot of their tenements which they hold in the same town, to which tenements they assert that the aforesaid common is appurtenant, and from this it follows that the aforesaid common of pasture is the own soil of him the said abbot so that of common right it is quite lawful for the same abbot to have pasture there with his own beasts coming from any place whatsoever or to agist the beasts of others in the same pasture etc. Wherefore since the aforesaid Richard and the others show no special deed from him the said abbot or any of his predecessors by which it can be made plain to the court that the same abbot is precluded from having his pasture there, he asks judgment.

[1] 11 June 1310. [2] Shippon and Northcourt are hamlets of Abingdon.

The Record of the Case—*continued.*

Et predicti Ricardus et alii bene cognoscunt quod predictus abbas est dominus predicte uille de Abyndon, et quod ipsi sunt tenentes ipsius abbatis etc. set dicunt quod ipsi et alii tenentes eiusdem uille a tempore cuius non extat memoria seisiti fuerunt habendi predictam communam in separalitate absque hoc quod predictus abbas uel aliquis predecessorum suorum aliqua habuit aueria in eadem pastura depascencia usque tempus regis Henrici aui domini regis nunc iam infra quinquaginta annos nunc proximo preteritos quod quidam Iohannes quondam abbas de Abyndon' predecessor etc. perquisiuit de quodam Hugone filio Henrici unum messuagium cum pertinenciis in predicta uilla de Abyndon' ad quod predicta communa pertinet, et quidam Willelmus quondam abbas etc. predecessor etc. perquisiuit de quodam Willelmo Ouich unum messuagium cum pertinenciis in eadem uilla ad quod etc. et postmodum tempore domini regis Edwardi patris domini regis nunc quidam Henricus quondam abbas etc. predecessor etc. perquisuit de quodam Benedicto le Lardener unum messuagium cum pertinenciis in eadem uilla ad quod etc. et similiter quidam Ricardus quondam abbas etc. predecessor etc. perquisiuit de quodam Hugone le Chaloner unum messuagium cum pertinenciis in eadem uilla ad quod etc. Et dicunt quod predicti abbates predecessores etc. et similiter iste abbas qui nunc est a tempore perquisicionum predictarum et non ante fuerunt seisiti communandi in predicta pastura cum aueriis suis cubantibus et leuantibus in predictis messuagiis tantum et non de aliquibus aueriis suis aliunde uenientibus. Et hoc parati sunt uerificare sicut curia considerat etc. et unde petunt iudicium etc.

Et abbas dicit quod predecessores sui fuerunt seisiti depascendi aueria sua in predicta pastura tam ante tempus perquisicionum suarum predictarum quam post. Et hoc petit quod inquiratur per patriam. Et Ricardus et alii similiter. Ideo preceptum est uicecomiti quod uenire faciat hic in crastino Animarum xij etc. per quos etc. et qui nec etc. et ad recognoscendum quia tam etc.

29. CUMPTON *v.* HAULAY.

I.[1]

R. de C. e Johanne[2] sa femme furent attachez a respondre a G. de Compton' de plai, pur quei il prist ses avers en C.

Mal.[3] R. e J. avowent la prise par la reson qe un M.[4] Curson tient de une Beatrice de Kirkeby un meese ij bovetz de terre en C. par homage e[5] escuage nomement etc. e par sute a sa courte de C. e par les services de ij souz par an des queux services cele B. fu seisi par my

[1] From *D*, collated with *P*. [2] Cecile *P*. [3] *Om. Mal. P.* [4] *Om.* qe un M., *D.* [5] *Om.* e *D.*

Translation of the Record—*continued.*

And the aforesaid Richard and the others well acknowledge that the aforesaid abbot is lord of the aforesaid town of Abingdon, and that they are tenants of him the said abbot etc., but they say that they and the other tenants of the same town from a time whereof there is no memory were seised of having the aforesaid common in severalty, without the aforesaid abbot or any of his predecessors having any beasts pasturing in the same pasture until the time of King Henry the grandfather of the lord king who now is and within the fifty years now last past when a certain John sometime abbot of Abingdon predecessor etc. purchased of one Hugh the son of Henry a messuage with the appurtenances in the aforesaid town of Abingdon to which the aforesaid common pertains; and a certain William sometime abbot etc. predecessor etc. purchased of one William Ouich one messuage with its appurtenances in the same town to which etc. and afterwards in the time of the lord king Edward the father of the lord king who now is, a certain Henry sometime abbot etc., predecessor etc. purchased of one Bennet le Lardener one messuage with the appurtenances in the same town, to which etc.; and likewise a certain Richard sometime abbot etc. predecessor etc. purchased of one Hugh le Chaloner one messuage with the appurtenances in the same town to which etc. And they say that the aforesaid abbots, predecessors etc., and likewise this abbot who now is from the time of the purchases aforesaid, and not previously have been seised of commoning in the aforesaid pasture with their beasts levant and couchant in the aforesaid messuages only, and not with any of their beasts coming from elsewhere. And this they are ready to aver as the court may award etc.; and thereupon they ask judgment etc.

And the abbot says that his predecessors were seised of pasturing their beasts in the aforesaid pasture as well before the time of their purchases aforesaid as afterwards, and he asks that this may be inquired by the country. And Richard and the others likewise. Therefore the sheriff is ordered to cause to come here on the morrow of All Souls twelve etc., by whom etc., and who neither etc., and to make recognition, because as well etc.

29. COMPTON *v.* HAULAY.

I.

Robert [of Haulay] and Joan his wife were attached to answer Giles of Compton on a plea wherefore they took his beasts in C.

Malberthorpe. Robert and Joan avow the taking for the reason that one Maud Curzoun held of one Beatrice de [Virley] a messuage and two bovates of land in C. by homage and scutage, namely etc. and by suit to her court at C., and by the service of two shillings a year, of which services this Beatrice was seised by the hand of this Maud as

la mayn Maude com par my la mayn son verrai tenant[1] etc. Et pur la sute arrere etc.,[2] dont de B. descendi le dreit a Johanne etc.[3]

Denum. Sire, nous vous dioms qe nous tenoms les tenemenz ou il avowe de R. e J. com du dreit J.[4] ensemblement ove autres[5] par homage e escuage e par les services de v souz par an des queux services il ont esté seisiz par my nostre[6] mayn com par mye[7] etc. E demandoms jugement si sur autre qe sur nous puissez avowere faire.

Mal. Par tant ne put il nostre avowere abatre sanz ceo q'il die coment il vyent de estre nostre tenant ou par purchaz ou en autre manere, dont nous demandoms[8] jugement.

Ber.[9] Il vous dit, q'il est vostre tenant de dreit e vous seisi par my sa mayn ; quel mester ad il a dire coment il avient d'estre vostre tenant del hure q'il se fait privé a vous ; mès en ceo cas s'il deit q'il fu vostre tenant[10] par vertue de statut par cas il dirroit e allegeroit feffement.

Malm. Nous vous dioms qe G. tent de nous ij meeses ij carués de terre e tant de pree, issi qe cel mese ne ij bovetz de terre ne sont parcelle etc. e issi seisi sumes par my la mayn Maude.[11]

Denum. Sire, nous vous dioms qe Beatrice lour auncestre de qi seisine il ount avowé nous dona ceux deux meses e deux carués de terre e la rente de certeinz tenemenz[12] par my ceste chartre a tenir de lui par homage e escuage e par les services de v souz par an, issi qe ceste Maude fut un des tenantz qe tient un mese ij bovetz de terre qe atturna a nous de ses services, issi qe nous purchasames le demene de Maude, e issi fustes vous seisi par my nostre[13] mayn etc. com de parcelle de tenemenz etc. (E mist avant le fait Maude.)

Malm. Maude[14] se atturna unqes[15] prest etc.

Denum le revers.

II.[16]

Gille de Coutton se pleint qe Robert de Haule et Johane sa femme atort pristrent ses avers.

[*Kyng.*] Robert et Johane etc. de dreit Johane avowerent etc. sur un Maude de Cusson come sur lour verray tenaunt par la resoun qe

[1] *Om.* my...tenant *P.* [2] *Om.* etc. *D.* [3] This last clause appears to be misplaced. [4] *Ins.* ceux tenemenz *D.* [5] *Ins.* tenemenz *P.* [6] vostre *D.* [7] *Om.* com par mye *P.* [8] *Om.* demaundoms *D.* [9] Attention is drawn to this speech in the MS. by a marginal note, which was partially destroyed when the margin was reduced. [10] *Om.* del hure . . . tenant *P.* [11] Giles *P.* [12] tenauns *P.* [13] vostre *D.* [14] *Ins.* ne *P.* [15] *Ins.* a vous *P.* [16] From *M* (fol. 41 v°).

by the hand of her very tenant etc.; and from Beatrice descended[1] the right [of the services] to Joan etc.; and for the suit arrear etc.

Denham. Sir, we tell you that we hold the tenements for which he avows of Robert and Joan as of the right of Joan together with other tenements by homage and scutage and the service of five shillings a year of which services they have been seised by our hand as by etc. We ask judgment whether upon another than us they can make an avowry.

Malberthorpe. He cannot by that abate our avowry without saying how he came to be our tenant, whether by purchase, or by some other way. Therefore we ask judgment.

Bereford C.J. He tells you that he is your tenant in the right, and that you are seised by his hand. What need has he to say how he came to be your tenant, seeing that he makes himself privy to you? But in this case if he said that he was your tenant by virtue of the statute, perhaps he should say how and would allege a feoffment.

Malberthorpe. We tell you that Giles holds of us two messuages, two carucates of land, and so much meadow, but so that neither the messuage nor the two bovates of land (mentioned above) are parcel thereof etc.; and we are seised by the hand of Maud.

Denham. Sir, we tell you that Beatrice their ancestress of whose seisin they have avowed gave us these two messuages and two carucates of land and the rent of certain tenements by this charter to hold of her by homage and scutage and by the services of five shillings a year, and that this Maud was one of the tenants who held a messuage and two bovates of land and she attorned to us for her services, and that we [afterwards] purchased the demesne from Maud, and so you were seised by our hand etc. as of parcel of the tenements etc. (And he produced the deed of Maud.)

Malberthorpe. Maud never attorned. Ready etc.

Denham. The contrary.

II.

[Giles of Compton] complains that Robert of Haulay and Joan his wife wrongfully took his beasts.

Kingshemede. Robert and Joan etc. in right of Joan avow etc. upon one Maud Curzoun as upon their very tenant for the reason that

[1] See note 3 opposite.

mesme cele Maud tent de eux etc. de dreit Johane certein tenementz par homage et feauté et par les services etc. des queux services un Beatrix de Virreley fut seisi par my la mayn l'avauntdite M. Cusson com par my la mayn sa verroy tenaunt, dont de Beatrix descendi le dreit des services etc. a Willeme com a fitz etc. de Willeme a Johan, de Johan a Johane q'ore est demaundaunt ensemblement ove son baroun et a Alice com a ij filles et un heir issint q'en allouaunce des autres services les services mesme ceste Maude furent assignez a Johane q'ore fet cest avowere ensemblement ove son baroun ; et pur les services qe arrere etc. si avowent mesme ceux R. et J. com de dreit Johane la prise etc. sur mesme celui Maude come sur lour verray tenaunt com de dreit J. en lour fee.

[*Scrop*] (pur Gille de C.). Sire nous vous dioms qe nous avoms purchacé les tenementz dont les services sount issauntz pur les queux ele fet ceste avowere en demene, et mesme ceux etc. qe fount ore ceste avowere sount seisi de noz services com de lour verroi tenaunt. Jugement si sur autre qe sur nous pussent avowere fere.

Kyng. Bien avez entendu coment nous avowoms sur M. com sur etc. ; coment il respoignent et dient q'il ount purchacé les tenementz et sount seisiz. Et ne diount mye q'il ount purchacé par la forme de statut a tenir etc. ne en nul autre manere ne se fount privé a nous. Jugement, s'il nous pussent estraunger de nostre verroi tenaunt sur qi nous[1] etc.

Scrop. Nous sumes seisi des tenementz etc. *ut supra.* Jugement si sur autre qe sur nous etc.

Kyng. Sire, la ou il dient qe nous sumes seisi par my lour mayn des services come par my la mayn nostre verray tenaunt, Sire, nous ne pooms pas dedire q'il n'est nostre tenaunt des autres tenementz et nous seisi de les services issauntz de ceux tenementz par my la mayn etc. Mès nous vous dioms q'il n'est pas nostre tenaunt de les tenementz dont les services sount issauntz pur les queux nous fesoms ore ceste avowere, ne nous de ceux services par my sa mayn unqes seisi, ne il unqes se attourna, ne unqes ly acceptames nostre tenaunt de ceux tenementz, prest etc.

Et[2] pur ceo qe Gille de C. ne ossa mye demorrer a cel averrement il respondi outre et dit en verité qe Beatrix le auncestre les avauntditz Johane et Alice de qi seisine il ount avowé fut en ascun tenps seisi

[1] vous *M.* [2] The text of this paragraph is corrupt, and admits of no satisfactory amendment.

this same Maud holds of them etc. as of the right of Joan certain tenements by homage and fealty and by the services etc. of which services one Beatrice de Virley was seised by the hand of the aforesaid Maud Curzoun as by the hand of her very tenant. From Beatrice descended the right of the services etc. to William as son etc., from William to John, and from John to Joan who is now demandant together with her husband, and to Alice as to two daughters and one heir, so that in allowance of the other services, the services of this same Maud were assigned to Joan, who together with her husband now makes this avowry ; and for the services which are in arrear etc., these same Robert and Joan as of the right of Joan avow the seizure etc. upon this same Maud as upon their very tenant as of the right of Joan in their fee.

[*Scrope*] (for Giles of Compton). Sir, we tell you that we have purchased the tenements, from which these services issue, and for which she now makes this avowry, in demesne ; and these same persons who now make this avowry are seised of our services as those of their very tenant. Judgment whether upon any other than upon us they can make the avowry.

Kingshemede. You have heard how we have avowed upon Maud as upon etc. and how they reply and say that they have purchased the tenements and are seised thereof. They do not say that they have purchased by the form of the statute[1] to hold etc. nor have they in any other way made themselves privy to us. Judgment whether they can estrange us from our very tenant upon whom we etc.

Scrope. We are seised of the tenements etc. (as above). Judgment whether upon any other person than upon us they can avow etc.

Kingshemede. Sir, where they say that we are seised by their hands of the services as by the hand of our very tenant, we cannot deny that he is our tenant of other tenements and that we are seised of the services issuing from those tenements as by the hand etc. But we tell you that he is not our tenant of the tenements from which the services are issuing and for which we now make this avowry, nor were we ever seised of those services by his hand nor did he ever attorn to us, nor have we ever accepted him as our tenant of those tenements. Ready etc.

And because Giles of Compton did not dare to stand by that averment he answered further, and said[2] that in truth Beatrice the ancestress of the aforesaid Joan and Alice on whose seisin they have avowed

[1] Stat. *Quia emptores.*

[2] See note 2 on the opposite page. From the Record it would appear that the purport of the speech which cannot be translated was as stated above. The reporter seems to have thought that it was Giles and not (as the Record shows) the father of Giles whom Beatrice enfeoffed.

del maner de Cusson en demene et en services, si la qe cele M. sur qi il etc. fut un des tenauntz et attourna a nous par vertue de cele graunt q'il nous enfeffa de les services mesme cele Maude pur les queux il fet ore ceste avowere par quele graunt Maude se attourna a nous de les services et avoms purchacé le demene pus le statut de mesme cele Maude a tenir de chief etc. Jugement si sur autre qe sur nous pussent avowere fere.

Kyng. Maude ne se attourna unqes, prest etc.

Et alii e contra.

The Record of the Case.

De Banco Rolls, 4 Edw. II., Trinity (No. 187), r. 209, Lincolnshire.

Robertus de Haulay et Iohanna uxor eius summoniti fuerunt ad respondendum Egidio de Compton de placito quare ceperunt quemdam equm ipsius Egidii et eum iniuste detinuerunt contra uadium etc. Et unde idem Egidius dicit quod predicti Robertus et Iohanna die Iouis proxima post festum sancti Barnabe apostoli anno domini regis nunc tercio in quodam loco qui uocatur Williamestoft of the Hull ceperunt predictum equm et eum iniuste etc. contra uadium etc. quousque etc. unde dicit quod deterioratus est et dampnum habet ad ualenciam centum solidorum. Et inde producit sectam etc.

Et Robertus et Iohanna per attornatum suum ueniunt et defendunt uim et iniuriam quando etc. Et bene aduocant predictam capcionem et iuste etc. Dicunt enim quod quedam Matillis Curzoun tenuit de quadam Beatrice de Virley antecessore ipsius Iohanne etc. duo messuagia et duas bouatas terre cum pertinenciis in predicta uilla de Wylingham unde predictus locus in quo etc. est parcella per homagium fidelitatem et seruicium duorum denariorum per annum et faciendo sectam ad curiam ipsius Beatricis de Grysby de tribus septimanis etc. et ad scutagium domini regis quadraginta solidorum cum acciderit duos solidos et ad plus plus etc. et ad minus minus etc. de quibus homagio et seruicio eadem Beatrix fuit seisita per manus ipsius Matillidis etc. Et dicunt quod de predicta Beatrice descendit ius etc. cuidam Willelmo ut filio et heredi et de ipso Willelmo cuidam Iohanni ut filio et heredi etc. et de ipso Iohanne isti Iohanne uxori predicti Roberti et cuidam Alicie ut filiabus et heredibus etc. inter quas hereditas ipsius Beatricis partita fuit etc. ita quod manerium de Grysby cum pertinenciis ad quod seruicium predicte Matillidis spectat etc. assignatum fuit ipsi Iohanne uxori predicti Roberti in propartem etc. et quia fidelitas predicte Matillidis eis aretro fuit die

was sometime seised of the manor of [Wylingham] in demesne and service [and was so seised until] this Maud upon whom they avow etc. and who was one of the tenants [of the manor and] attorned to [our father] by virtue of this grant, [by which Beatrice] enfeoffed [our father] of the services of this same Maud, for which services they now make this avowry; and on this grant Maud attorned to [our father] for the services. And [our father afterwards] purchased the demesne from this same Maud after the statute to hold of the chief lords etc. Judgment whether upon any other than us they can make avowry.

Kingshemede. Maud never attorned. Ready etc.

And the others to the contrary.

Translation of the Record.

For the reference, see opposite.

Robert of Haulay and Joan his wife were summoned to answer Giles of Compton on a plea, wherefore they took a certain horse belonging to him the said Giles and wrongfully detained it against gage etc. And whereupon the same Giles says that the aforesaid Robert and Joan on the Thursday [1] next after the feast of St. Barnabas the Apostle in the third year of the lord king who now is in a certain place which is called Williamestoft-of-the-Hull took the aforesaid horse and wrongfully etc. against gage etc. until etc. Whereupon he says that he is injured and has damage to the value of one hundred shillings; and thereof he brings suit etc.

And Robert and Joan by their attorney come and deny tort and force, when etc.; and well they avow the aforesaid taking, and rightly etc.; for they say that a certain Maud Curzoun held of a certain Beatrice of Virley the ancestress of her the said Joan etc. two messuages and two oxgangs of land with the appurtenances in the aforesaid town of Willingham[2] whereof the aforesaid place in which etc. is parcel by homage fealty and the service of two pence a year and by doing suit to the court of her the said Beatrice at Girsby [3] from three weeks to three weeks and by paying for the lord king's scutage of forty shillings, when it falls due, two shillings, and for more more etc. and for less less etc. and of this homage and service the same Beatrice was seised by the hands of her the said Maud etc. And they say that from the aforesaid Beatrice the right etc. descended to one William as son and heir, and from him the said William to one John as son and heir etc., and from him the said John to this Joan, the wife of the aforesaid Robert, and to one Alice as daughters and heiresses etc. between whom the inheritance of her the said Beatrice was divided etc. so that the manor of Girsby with the appurtenances, to which the service of the aforesaid Maud belongs etc. was assigned to her the said Joan the wife of the aforesaid Robert as the share etc. And because the fealty of the aforesaid Maud was in arrear to

[1] 18 June 1310.

[2] Probably South Willingham nine miles to the south-west of Louth.

[3] Girsby is in the parish of Burgh on Bain.

The Record of the Case—*continued.*

capcionis predicte ceperunt ipsi equm predictum in loco predicto sicut eis bene licuit etc.

Et Egidius dicit quod predicti Robertus et Iohanna capcionem illam super ipsam Matillidem iustam aduocare non possunt [1] etc. Dicit enim quod quidam Nicholaus pater predicti Egidii, cuius heres ipse est, perquisiuit de predicta Beatrice antecessore predicte Iohanne capitale messuagium suum in Wylingham cum tota terra quam eadem Beatrix habuit in dominico in eadem uilla et cum duodecim bouatis terre et duodecim toftis tentis de ipsa Beatrice in uillenagio etc. et cum aduocacione ecclesie eiusdem uille simul cum seruiciis libere tenencium manerii de Wylingham et una cum aliis tenementis etc. tenendum de ipsa Beatrice et heredibus suis per homagium et fidelitatem et seruicium quinte partis feodi unius militis uidelicet ad scutagium domini regis quadraginta solidorum cum acciderit octo solidos etc. et per seruicium unius libre cymini uel unius denarii per annum pro omni seruicio etc. Et dicit quod predicta Matillis que fuit tenens predicte Beatricis de predictis duobus messuagiis et duabus bouatis terre in predicto manerio de Wylingham racione concessionis predicte Beatricis etc. attornauit se de fidelitate et seruicio suo predicto Nicholao. Et dicit quod eadem Matillis postea feoffauit predictum Nicholaum de predictis duobus messuagiis et duabus bouatis terre tenendis de ipsa Beatrice capitali domina et heredibus suis etc. unde dicit quod ipse tanquam heres predicti Nicholai modo tenet tenementa illa de predictis Roberto et Iohanna simul cum aliis tenementis per unum et idem seruicium etc. et quod iidem Robertus et Iohanna fuerunt seisiti de seruiciis ipsius Egidii pro predictis tenementis. Et petit iudicium si predicti Robertus et Iohanna districcionem predictam super alium quam super ipsum Egidium tenentem suum aduocare possint etc.

Et Robertus et Iohanna dicunt quod predicta Matillis nuncquam se attornauit etc. predicto Nicholao patri ipsius Egidii . . . predictas concessionem et assignacionem predicte Beatricis etc. sicut predictus Egidius dicit Et de hoc ponit se super patriam. Et Egidius similiter etc. Ideo preceptum est uicecomiti quod uenire faciat hic in crastino Animarum xij per quos etc. et qui nec etc. quia tam etc.

30. MABILE *v.* THE BISHOP OF LINCOLN.

I.[2]

Replegiare; ou iij furent pleintifs severalment par iij originals et une avowere fuist fait joyntement sour eux treis par l'evesqe de Norwitz sur la comunaulté de Lenne pur coe qe il deussont venir a sa court et eslire un d'eux d'estre soun provot et culier ses rentis etc.

Henri de Stanton, Robert de C. Willem de T. porterent iij[3] *replegiare* devers l'evesqe de N. *separatim* et se pleindrent severalment de lour avers atort prises etc. L'evesqe avouwa la prise par la resoun q'il est

[1] MS. potest. [2] From *B* collated with *G*, *M* and *R*. In all these MSS this case is attributed to Easter term 4 Edw. II. [3] iiij *B*.

Translation of the Record—*continued.*

them on the day of the taking aforesaid they took the aforesaid horse in the place aforesaid, as well they might etc.

And Giles says that the aforesaid Robert and Joan cannot avow that taking upon her the said Maud as rightful etc.; for he says that one Nicholas the father of the aforesaid Giles, whose heir he is, purchased of the aforesaid Beatrice the ancestress of the aforesaid Joan her chief messuage in Willingham with all the land which the same Beatrice had in demesne in the same town and with twelve oxgangs of land and twelve tofts held of her the said Beatrice in villainage etc. and with the advowson of the church of the same town together with the services of the free tenants of the manor of Willingham and together with other tenements etc. to hold of her the said Beatrice and her heirs by homage and fealty and the service of the fifth part of the fee of one knight, to wit for the lord king's scutage of forty shillings, when it falls due, eight shillings etc. and by the service of one pound of cumin or of one penny a year for all service etc. And he says that the aforesaid Maud who was the tenant of the aforesaid Beatrice of the aforesaid two messuages and two oxgangs of land in the aforesaid manor of Willingham by reason of the grant of the aforesaid Beatrice etc. attorned for her fealty and service to the aforesaid Nicholas. And he says that the same Maud afterwards enfeoffed the aforesaid Nicholas of the aforesaid two messuages and two oxgangs of land to hold of her the said Beatrice as chief lady and of her heirs etc. Whereupon he says that he as the heir of the aforesaid Nicholas now holds those tenements of the aforesaid Robert and Joan together with other tenements by one and the same service etc. and that the same Robert and Joan were seised of the services of him the said Giles for the aforesaid tenements. And he asks judgment whether the aforesaid Robert and Joan can avow the aforesaid distress upon another than him the said Giles his tenant etc.

And Robert and Joan say that the aforesaid Maud never attorned etc. to the aforesaid Nicholas the father of him the said Giles on the aforesaid grant and assignment of the aforesaid Beatrice etc. as the aforesaid Giles says. And of this they put themselves upon the country. And Giles likewise etc. Therefore the sheriff is ordered to cause to come here on the morrow of All Souls twelve by whom etc. and who neither etc. because as well etc.

30. MABILE *v.* THE BISHOP OF LINCOLN.

I.

Replegiari. Three persons were severally plaintiffs by three original writs, and an avowry was made jointly upon the three by the bishop of [Lincoln] as upon the commonalty of [Louth] because they ought to have come to his court and chosen one of them to be his reeve and collect his rents etc.

Henry of Stiveton Roger [Sibil] and William [Mabile] brought three writs of replevin severally against the bishop of [Lincoln], and complained severally of their beasts having been wrongfully taken etc.

seigneur de la ville de Lenne en la quele yl y ad un tiele custume qe la comunalté de Lenne doit venir le Lundy proscheyn après la[1] seynt Michel a la court mesme cestuy evesqe en C. et illoesqe eslire un d'eux pur qi il voillent respondre d'estre provost l'evesqe nomement de lever ses rentes et l'espleez de soun manoir de T. etc. de quele custume luy et ses predecessours etc. de temps etc. et pur ceo q'il[2] ne voilleient eslire *ut supra* come faire devoient si avowe il sour H. R. et W. come sour tenauntz de la comunalté de Lenne Et issint fit il un avowere joyntement sour touz les pleintifs nyent countre esteaunt q'il se pleindrent severalment en mesme les luz qe les pleintifs counterent.

Pass. Sire, il ne lie ceste avowere sour comun droit[3] des[4] services issauntz de tenementz qe a luy sount regardauntz par resoun de sa seigneurie ne il ne dit mye q'il fuist seisi de destreindre, quel houre que la comunalté refusa cel eleccioune fere ne nule especiauté ne moustre qe defet comun droit. Jugement de la forme etc.

Herle. Soit avowé, qe c'est[5] la substaunce de nostre avowere et noun pas a la fourme.

Pass. L'avowere est par resoun d'une custume et noun pas par resoun des services etc.[6] regardauntz etc.[6] par resoun de seigneurie qe luy doune avowement ; et[7] de comune droit[8] il ne se puist mesme fere juge a destreindre[9] pur cele custume s'il ou ses predecessours ne eussent esté seisi a destreindre quel houre etc. ou q'il[10] eust especiauté etc. qe jeo pose qe vous seietz seigneur d'une ville et q'en temps de faudage touz les bestes[11] ceux de la ville doivent giser en vostre faude issint qe nul ne doit faude avoir si vous noun, si nul se reteigne de cele faude, vous ne lour poietz pas destreindre etc. e fere vous mesme juge etc. de cele custume q'est encountre comune droit, nyent plus par de cea. Jugement de la fourme.

Herle. Non est simile, qe c'est une custume regardaunt a chescun persone[12] *separatim,* mès ceste custume[13] a un comunalté come a un corps en quel cas nous ne poms autrement avenir qe par destresce.

Ber. Coment qe vous usez ceste excepcion nous l'entendoms de tiele nature come ele doit estre entendu, *hoc est*[14] *peremptoria,* pur ceo il covient qe vous seietz avouwé sour ceo come chef respounse avaunt qe vous eietz nul jugement de nous.[15]

Pass. issit etc. revyent et dit (pur H. de S.) q'il ne puist sour lui

[1] *Ins.* feste de *G.* [2] *Ins.* tynt etc. e il *M.* [3] *Ins.* com de custumes et *M.* [4] pur *G, R.* [5] *Ins.* a *M.* [6] *Om.* etc. *M.* [7] qe *G, R. Om.* et *M.* [8] *Ins.* et *M.* [9] *Om.* a destreindre *M.* [10] s'il *M,* il *R.* [11] *Ins.* de *M.* [12] *Om.* persone *M.* [13] *Ins.* se lie *M. Ins.* est *R.* [14] *Om.* hoc est *M.* [15] *For* il covient . . . nous *subs.* q'il busoigne avant qe vous eiez nul descrecioun de nous qe vous seiez avowé sur ceo com sur chief respouns *M.*

The bishop avowed the taking for the reason that he is lord of the town of [Louth] in which there is this custom, that the commonalty of Louth ought to come on the Monday next after the feast of St. Michael to the court of this same bishop at [Louth], and there choose one of their number, by whom they would answer, to be the bishop's reeve, that is to say, to collect his rents and the profits of his manor of Louth etc. of which custom he and his predecessors etc. from the time etc. And because they would not choose (as above) as choose they ought, so avows he upon Henry Roger and William as upon his tenants of the commonalty of [Louth], and so he made an avowry jointly upon all the plaintiffs notwithstanding that they complained severally, in the same places of which they counted.

Passeley. Sir, he does not lay this avowry upon common right for services issuing from tenements which belong to him by reason of lordship, nor does he say that he was seised of the right to distrain, whenever the commonalty refused to make an election, nor does he show any specialty in defeasance of common right. We ask judgment of the form of the avowry.

Herle. Be avowed; for this answer is to the substance of our avowry and not to the form.

Passeley. The avowry is by reason of a custom, and not by reason of the services etc. belonging etc. by reason of lordship which give him a right of avowry. And of common right he cannot make himself a judge to distrain for this custom, if he or his predecessors had not been seised of distraining whenever etc. or if he has not specialty etc. For suppose you are lord of a vill and that in time of foldage all the beasts of the men of the vill ought to lie in your fold, and so that none ought to have his fold but you, then if anyone withhold his beasts from that fold, you could not distrain etc. and make yourself a judge etc. of that custom, for it is against common right; no more can you in this case. We ask judgment of the form.

Herle. That is not a like case, for that is a custom belonging to each man severally, but this custom belongs to a commonalty as to one body, and in this case we cannot arrive at it save by distress.

Bereford C.J. However you use this exception we understand it, as it ought to be understood, that is to say, peremptory; therefore you must be avowed on this as a chief answer before you have any judgment from us.

Passeley went out and imparled; and he came back and said on

avowere faire, q'un R. evesqe de N. soun predecessour graunta a les gentz de la ville de Lenne touz les fraunchises et les custumes qe les citeeseinz de N. avoient par soun fait et le chapitire qe le tesmoigna et vous dyoms qe ceux de N. sount deschargietz de teu manere de custume. Jugement si encountre soun fait etc. (Et pur R. et W.) dit[1] q'en le temps le roi Henri si fuist la comunalté deschargié de la custume et eleccioun issint qe le provost serroit eslu[2] de part l'evesqe mesme, mès pur outrajeouse destresce q'il soleient fere qe furent eslu par[3] l'evesqe s'acorderent et de comun assent ordinerent et granterent q'il deyvent eslire d'eux un provost a lever les rentes tiel pur quei il voudreient respoundre et qe l'evesqe luy trovereit certeinz estovers issint q'eux eslurent pur lour comun profit etc. des queux estovers solome le covenant etc. l'evesqe se ad sustret[4] par quei il ne voudront mès eslire. Jugement si desicome ceste graunt et ceste eleccioun ne fuist pas de comun droit einz d'un graunt et une volunté et puis le temps le roi H. si a tiele avowere etc.

Herle. La ou vous alleggez interrupcioun de temps pur R. et W. puis temps de memorie, l'evesqe et ses predecessours toutditz pus temps de memorie saunz interrupcioun[5] seisi. Prest etc.

Pass. Le revers. Ore responetz au fait qe nous usoms pur H. de S.

Herle. La demorroms nous en jugement,[6] depuis qe R. et W. qe sount de la comunalté ount douné chief issue, come en deschargeant eux de cele custume, et pur tout la comunalté et qe chiet en le droit, si a H. devoms respoundre.

Pass. H. est franc homme etc. et vous estes en court a sa siwite demene et par original. Jugement si a li ne devet[7] respoundre.

Fr. Si l'averement passe pur eux de la comunalté encountre l'evesqe, ne serra mye la comunalté dounqe deschargié de ceste custume? (*quasi diceret,* Sic).

Pass. Il ne sount mye d'une condicioun, qe H. ly reboute par my fet; et les autres[8] ount pledié al averement etc. par quei H. serra de mellour condicioun qe les autres etc.

Denom. Par iij originals homme ne puist mye avoir une mesme issue; mès covent a chescun divers[9] issue et divers[9] jugement, et autrement l'original n'est pas servy. Et d'autrepart si R. et W. eussent

[1] si dit il *M.* [2] allowé *M.* [3] *Om.* eslu par, *Ins.* al oeps *R.* [4] retret *M.* [5] *Om.* de temps . . . interrupcioun *R.* [6] descrecioun *M.* [7] devet *G, M,* devoms *B,* devez *R.* [8] auncestres *B.* [9] un *M.*

behalf of Henry Stiveton that the bishop could not avow upon him, for one Robert bishop of [Lincoln] his predecessor granted by his deed to the folk of the town of [Louth] all the franchises and customs which the citizens of [Lincoln] had by his own deed and the deed of the chapter of Lincoln which witnessed this ; and we tell you that the men of Lincoln are free from this sort of custom. We ask judgment whether against his deed he can avow etc. And on behalf of Roger and William he said that in the time of king Henry [III] the commonalty was freed from the custom and the election, so that the reeve should be chosen by the bishop himself; but on account of the outrageous distresses which they who were chosen by the bishop were wont to make, they came to an agreement and by common assent ordained and granted that they should choose from their number a reeve to collect the rents, by whom they would answer, and that the bishop would find for the reeve certain estovers ; so that they chose a reeve for their common advantage etc. ; and the bishop has withdrawn [from finding these] estovers according to the agreement; wherefore the commonalty will no more elect a reeve. We ask judgment, seeing that this grant and this election was not of common right, but made by a grant and a consent, and since the time of king Henry, whether to such an avowry he should be received.

Herle. Where you allege on behalf of Robert and William an interruption since the time of legal memory, [we say that] the bishop and his predecessors have since the time of legal memory always been seised without interruption. Ready etc.

Passeley. The contrary. Now answer the deed which we are using on behalf of Henry of Stiveton.

Herle. Since Robert and William who are of the commonalty have joined a principal issue to discharge them of this custom, and this on behalf of the whole commonalty, which is a matter of right, we will await your judgment whether we ought to answer Henry.

Passeley. Henry is a free man etc. and you are in court at his own suit, and by an original writ ; we ask judgment whether you ought not to answer him.

Friskeney. If the averment pass for these men of the commonalty against the bishop, will not the commonalty then be discharged of this custom ? (*implying that it would*).

Passeley. They are not in the same position, for Henry rebuts the bishop by a deed, and the others have pleaded on the averment etc. Therefore Henry may be in a better position than the others etc.

Denham. By three originals there cannot be one and the same issue ; but each original requires a different issue and a different judgment and otherwise the originals are not served etc. And besides if Robert

ensement pledié ceo ne cherroit mye en charge qaunt a H. q'il ad soun bref demene et sey deschargereit, par quei il semble q'il doit estre respoundu, et autrement il siwereit inconvenyent qe par resoun del meindre de la comunalté toux serrount chargietz.

Scrop. Si R. et W. eussent conu ceste chose, serroit cele conisaunce prejudiciel qe H. qe n'est pas partie ne se poeit descharger etc.[1]

Hervi. Une conisaunce qe chiet en charge ne serra mye si prejudiciel as autres etc. mès la ou il plede en descharge le pleder le meyndre sert[2] pour touz ; *sic in proposito etc.*

Berr. Si vous demorrassetz en jugement sour ceo poynt vous n'averetz pas ayde de la comunalté solome la opinioun des uns.

Pass. C'est a vous,[3] mès desicome H. est franc homme, jugement.

Berr. Si vous demorrassetz en jugement etc. et[4] si preissetz issue sour les fetz, et les fetz vous eussent chargié[5] et toute la comunalté ; et si l'enqueste joynsit devers les autres[6] par cas[7] deschargereit[8] toute la comunalté ; et issint deux jugementz chescun contraire as autres en un mesme cas.

Denom. Non est sic, quia sunt diuersa originalia.

Malm. Nous voloms averrer qe nous et nos predecessours avoms esté seisi saunz interrupcioun de temps etc. ; et vous mettet avaunt un fet le quel n'esteint mye cele custume. Jugement.

Pass. Le fet vostre predecessour q'est confermé par le deen etc. veot qe les unes gentz etc. tenent et eyent mesme les fraunchises et custumes qe ount les citezeinz de N. et nous voloms averrer q'il n'ount mye cele custume. Responez a ceo.

Herle. Vostre fet qe vous mettet avaunt n'esteint mye cele custume ne n'est pas barre ; par quei nous n'avoms pas mester a ceo respoundre.

Denom. Qaunt fet est mys en barre primes doit homme graunter ou dedire, et puys pleder a la voidaunce.

Malm. Depuis qe nous voloms averrer *ut supra* le quel averement vous refusetz, jugement.

Pass. Conissetz le fait ou deditz ; et[9] demorroms en jugement.

Ber. Nous recordoms bien q'il tendent d'averer[10] qe luy et ses predecessours pus[11] ceo fet et avaunt de tout temps saunz interrupcion ount esté seisi de cele custume,[12] le quel averement vous refusetz ; par quei nous le tenoms a graunté.

[1] *Om.* ne . . . etc. *Ins.* serroit ousté de son respons. Non credo *M.* [2] est *M.* [3] *Ins.* a veer *M.* [4] *Om.* Si vous . . . et *M.* [5] deschargié *M.* [6] *Om.* si l'enqueste . . . autres *M.* [7] *Ins.* l'enquest joynt pur les autres *M.* [8] chargera *M.* [9] *Ins.* pus *G, M, R.* [10] *Om.* q'il . . . d'averrer *M.* [11] par *B, G.* [12] *Ins.* a ceo q'il dient et ceo tendent de averrer *M.*

and William had pleaded in this way, this should not be the cause of a charge on Henry, for he has his own writ, and may discharge himself. Therefore it seems that he ought to be answered. Otherwise incongruity would ensue, because by reason of a minority of the commonalty all might be charged.

Scrope. If Robert and William had acknowledged this matter, would their acknowledgment have been so prejudicial that Henry who was not a party to the acknowledgment could not discharge himself?

Stanton J. An acknowledgment which relates to a charge will not be prejudicial to the others etc.; but where there is a plea in discharge, the plea of the minority serves for all. So in the case put etc.

Bereford C.J. If you await judgment on this point you will not have aid from the commonalty, according to the view of some of us.

Passeley. That is for you to consider; but since Henry is a free man we ask judgment.

Bereford C.J. If[1] you were to take issue on the deeds and [it were found that] the deeds had charged you and all the commonalty; and if an inquest were joined with respect to [Robert and William] the inquest might perchance discharge the whole commonalty. Thus there would be two judgments, each contrary to the other in the same case.

Denham. That is not so; for there are different original writs.

Malberthorpe. We wish to aver that we and our predecessors have been seised without interruption from time immemorial etc. and you put forward a deed which does not extinguish this custom. Judgment.

Passeley. The deed of your predecessors which is confirmed by the Dean etc. states that some persons etc. hold and have the same liberties and customs as the citizens of Lincoln have; and we wish to aver that the citizens have not this custom. Answer that.

Herle. Your deed which you put forward does not extinguish this custom, nor is it a bar. Therefore we have no need to reply to it.

Denham. When a deed is produced as a bar, first of all a man should either grant it or deny it; and then plead on its avoidance.

Malberthorpe. Since we wish to aver (as above), and you refuse the averment, we ask judgment.

Passeley. Acknowledge the deed or deny it, and we will await judgment.

Bereford C.J. We will record that they offer to aver that he and his predecessors after the deed and before the deed at all times without interruption have been seised of this custom, and that you refuse this averment; therefore we take it for granted.

[1] The first seven words of this speech (see the French text opposite) seem to be intrusive and a repetition of the opening words of Bereford's last speech.

Pass. Dount prioms nous d'autrepart qe vous tenetz le fet graunté, depuis q'il ne dedient pas : et issint demorroms en vos agardetz,[1] si encountre ceo fait puissetz pur tiele custume avower.

Et sic ad iudicium.

II.[2]

Diverse *replegiare* porté vers une persone ou il fist une avowere pur ceo qe la comonalté de une ville ne voleynt eslire provost de quele comonaltée les pleintifs furent. Et lia sa seisine de cele custome du temps, dont y ni ad memore ; dount deux plederont au pais, e un altre en descharge de cele custome mist avant fait al predecessour l'avowant, ou fut dit q'il respondisse as autres et disoient q'il n'avoit mester qe si jugement se fereit pur un de comunalté par tant serroit tote la comunalté deschargé. Set defuit iudicium etc.

Henri de Stanton e deux autres porteront chescun several bref de lour avers atort pris etc. vers l'evesqe de Nichol e se pleinderont severalment.

L'evesqe avowa etc. par la raisone q'il est seignur de la ville de Lene[3] e q'il ad une tele custume qe la comunalté de Lene deit venir le Lundy procheyn après la feste de seint Michel a la court mesme cesti evesqe en C. e illoqes elirront un de eaux pur qi il voudrioint respondre de estre provost l'evesqe cel an, *scil.* a lever la rente e les appruementz de un manoir en C. de quele[4] lui e ses predecessours evesqes de Nichol unt esté seisi de temps dont il ni ad memore.[5] Et pur ceo q'il vyndront e ne voleiont eslire provost come faire deiverent si avowe il etc. sur A. e sur les autres com sur eaux de la comunaltée de Lene.

Pass. Il ne lie mye ceste avowere de[6] comune dreit einz par resoun de une custume qe ne ly est pas doné[7] par resoun de seignurie issant de ascuni tenance ; ne il ne dit pas en avowant q'il e ses predecessours ount esté seisi de destreindre quele hure qe la comunaltée refusa de faire ceste eleccion ne ne moustrez especiauté qe defait comune dreit. Demandoms jugement de la forme.

Herle. Volez ceo pur respons, qar le chalenge est purement a la matere ? [8]

Pass. Jeo posse qe vous seiez seignour de une ville e qe vous eietz[9] une tele coistyme qe en temps de faudage qe toutes les bestes de ceux de la ville deivent gisir en vostre faude issi qe nul n'eit faude fors vous[10] etc. si ceux de la ville se retreient de cel faudage vous ne lour poetz

[1] iugements *G, M, R.* [2] From *D* collated with *T* and *Y* (folio 157 r°). [3] Lowe *Y.* [4] *Ins.* chose *T.* *Ins.* custume *Y.* [5] *For* il . . . memore, *subs.* memorie ne curt *Y.* [6] sur *T.* [7] due *T, Y.* [8] nature *T.* [9] *Ins.* eu et usé *T.* [10] *Om.* vous *T.*

Passeley. Then we pray on the other hand that you take the deed as granted, for they do not deny it; and so we await your award whether against this deed they can avow for such a custom.

And so to judgment.

II.

Divers writs of replevin were brought against one person, and he avowed, because the commonalty of a town to which commonalty the plaintiffs belonged would not choose a reeve. And he laid his seisin of that custom from a time whereof there is no memory. Thereupon two of them pleaded to an inquest and another of them put forward in discharge of the custom a deed made [by] the avowant's predecessor. It was said that the bishop should answer [these plaintiffs], and he said that he had no need to do so, for if judgment passed for one of the commonalty, thereby would all the commonalty be discharged. Judgment is wanting.

Henry of Stiveton and two others brought each one his separate writ of 'beasts wrongfully taken etc.' against the bishop of Lincoln, and they made their plaints severally.

The bishop avowed etc. because he is lord of the town of [Louth] and because there is a custom there that the commonalty of Louth ought to come on the Monday next after the feast of St. Michael to the court of the same bishop at [Louth] and there elect one of their number, by whom they would answer, to be the bishop's reeve during the year, that is to say to collect the rent and the profits of the manor of [Louth], of which custom he and his predecessors bishops of Lincoln had been seised from a time whereof there is no memory. And because they came and would not choose a reeve, as choose they ought, so he avows etc. upon [Henry] and the others as upon men of the commonalty of Louth.

Passeley. He does not base this avowry on common right, but on a custom which is not given to him by reason of lordship arising from the tenancy of another, nor does he say in avowing that he and his predecessors have been seised of making distresses whenever the commonalty refused to make their choice, nor does he show specialty in defeasance of common right. We ask judgment of the form of the avowry.

Herle. Will you have this for your answer; for the challenge is purely to the substance?

Passeley. Suppose you are lord of a vill and that you have had and used a custom, that in time of foldage all the beasts of the men of the vill ought to lie in your fold, so that no man has a fold but you etc., if the men of the vill withdrew from that foldage, you could not

destrindre ne faire vous mesme juge pur cele custume q'est encontre comune dreit, nent plus en ceo cas. Jugement de la forme.

Herle. *Non est simile,* qe faude[1] est une coystume agardant[2] a chescun persone *separatim* ; mès *hic* la custume se lie a une comunauté come a[3] un corps, a quele custyme nous ne poums par autre voie qe par ceste avenir. Jugement etc.

Ber. Coment qe vous mettez avant vostre excepcion come dilatorie nous de ca la pernoms[4] peremptorie; e si vous voletz la demurrer y[5] vous covent estre avowé etc.

Pass. issint d'emparler e revynt e dist qe sur H. pur cele coystume ne poet il avower qe un Robert evesqe de Nichol vostre predecessour par l'assent e volenté du chapitre de Nichol si granta a les gentz de la ville de Lene totes les franches[6] custumes qe les citizeyns de Nichol avoint e vous dioms qe les citizeins de Nichol sont deschargé de cele custume. (Et mist avant fet etc.) Et demandoms jugement si encontre le fait son predecessour etc. pur cele custume pussez avower. Et pur Robert e William si dioms qe la ou vous dites qe vous e voz predecessours avetz esté seisi de cele custume pus temps de memore, ceo ne poez dire, qar en temps le roi Henri si fut la comunalté de cele custume deschargé issint qe les provoz serront e fussent[7] eslutz par l'evesqe etc. e lour baillifs, prest etc. si vous etc.

Herle. La ou vous allegez interrupcion pur Robert e William etc. l'evesqe e ses predecessours seisi continuelement pus temps de memore sanz interrupcion prest etc.

Pass. Le revers.

Pass. Ore responez a Henri de Stanton.

Herle.[8] La demurroms en voz jugemenz[9] del hure qe Robert e William ount doné issu de plee qe chiet en descharge pur toute la comunalté si a Henri de Stanton qi est un de la comunauté devoms respondre.

Pass. Henri est franc homme e de franc estat e estes venu en court a sa sute demene par un original. Jugement si a lui ne devez respondre.

Frisk.[10] Si l'averement passe encontre l'evesqe, qe R. e W. ount tendu, tote la comunauté serreit deschargé et *per consequens* Henri de Stanton q'est un de la comunautée.

Pass. Vous deissez bien si toutz troys ussent pledé en une manere e pris lour issue sur un mesme poynt.

[1] faudage *T*, *Y*. [2] *Sic T*, regardaunt *Y*. [3] *Om.* a *T*. [4] tenoms *T*, tenoms pur *Y*. [5] il *T*, *Y*. [6] franchises et *T*. [7] furent *T*, *Y*. [8] *Om. Herle Y*. [9] discrecioun *T*, *Y*. [10] This and the following speech are omitted in *Y*.

distrain nor make yourself judge concerning that custom, which is against common right. No more can you in this case. We ask judgment of the form of the avowry.

Herle. This is not a like case ; for foldage is a custom attaching to each person separately ; but here the custom attaches to a commonalty as a single body, and we cannot arrive at this custom by any other way than by this. Judgment etc.

Bereford C.J. Although you may put forward your exception as dilatory, we over here take it as peremptory ; and if you wish to take your stand on it, you must be avowed etc.

Passeley went out to imparl, and came back and said :—Sir, he cannot avow upon Henry for this custom because one Robert bishop of Lincoln your predecessor by the assent and will of the chapter of Lincoln granted to the men of the town of [Louth] all the liberties and customs which the citizens of Lincoln had ; and we tell you that the citizens of Lincoln are free of this custom. (And he put forward a deed etc.) We ask judgment whether against the deed of his predecessor etc. you can avow for this custom. And for Robert and William we tell you that, whereas you say that you and your predecessors have been seised of this custom from time immemorial, you cannot allege this, for in the time of king Henry the commonalty was freed of this custom so that the reeves were and should be chosen by the bishop etc. and their bailiffs. Ready etc. if you etc.

Herle. Where you allege on behalf of Robert and William etc. interruption, [we say that] the bishop and his predecessors have been continuously seised from time immemorial without interruption. Ready etc.

Passeley. The contrary.

Passeley. Now answer Henry of Stiveton.

Herle. Then, seeing that Robert and William have given an issue in this plea which is in discharge of the whole commonalty, we await your judgment whether we ought to answer Henry of Stiveton who is one of the commonalty.

Passeley. Henry is a free man and of free estate, and you have come into court at his own suit by an original [writ]. We ask judgment whether you ought not to answer him.

Friskeney. If the averment, which Robert and William have offered, pass against the bishop, then the whole commonalty will be discharged of the custom, and consequently Henry of Stiveton who is one of the commonalty.

Passeley. You would be right if all three had pleaded in the same way, and had joined issue on the same point.

Frisk. Coment q'il eient pledé si le jugement passe encontre l'evesqe tout prendra un mesme effecte quant a descharger la comunautée.

Denum. Par trois originals homme ne poet avoir un mesme issu, mès covent a chescun original un issu e un jugement, qar autrement lour original[1] ne serrount[2] pas servi. Et d'autrepart si R. e W. ussent malment pledez cherreit ceo en charge e en appeirement del estat[3] Henri ? (*quasi diceret,* Non). Par quei il semble q'il deit respondre ou autrement ensuwereit qe par raison del meyndre de la comunautée toutz serrount chargetz, *quod esset inconueniens.*[4]

Scrop (*ad idem*). Si R. e W. ussent conu ceste custume, serreit cele conissance prejudicial a Henri q'il ne se descharge? Noun serreit, par quei etc. Et d'autrepart si un bref de trespas seit porté vers plusours coment qe un eit respondu pur lui mesme le quel response par cas excusereit tout les autres, ne my pur ceo chescun se escusera par son response demene *per locum,*[5] *a multo forciori* ou plusours portont severals brefs vers un, il y covent q'il se escuse duement vers chescun.

Hervi. Si un ust pledé com en chargant la comunalté par sa conissaunce ou autrement etc., ceo ne serroit mie prejudicial as altres etc. mès la ou vous pledez en descharge de la comunalté[6] en tiel cas le pleder del meyndre siert[7] pur toutz. *Sic in proposito.*

Pass. Fort serreit a deviner le quel par le pleder Robert e William la comunalté serreit chargé ou deschargé avant jugement etc.

Ber. Si vous demurassetz sur ceo point en jugement par cas vous n'averetz nule eide de la comunalté solom la oppinion les uns de nous.

Pass. Tout[8] en vous, mès del hure qe H. est franc homme e de franc estat etc. *ut supra.*

Ber. Si vous preissez issu sur les feez e les feez ussent deschargé tote la comunalté, e par cas l'enquest q'est joynt pur Robert e William chargereit[9] tote la comunalté de cele custume e issint serront ij jugementz sur une mesme chose contraires.

Denum. Non est inconueniens quia diuersa sunt originalia et[10] diuersimode placitauerunt.[11]

[1] respounse *D.* [2] serroit *T,Y.* [3] *Om.* del estat, *ins.* de *T.* [4] The report ends here in *T.* [5] The correct reading of these words is doubtful. In both MSS. the second and third letters (*er*) of the first word and the last two letters (*um*) of the second word are represented in *D* by marks of contraction. It is also possible that the eight letters of the two words as printed should form a single word, and this may be a French word. [6] The words 'si un eust . . . comunalté' which are missing in *D* are taken from *Y.* [7] serreit *Y.* [8] ceo est *Y.* [9] est pur *Y.* [10] *Ins.* sic *Y.* [11] placitari *Y.*

Friskeney. However they may have pleaded, if judgment pass against the bishop, the judgment will have the same effect as regards discharging the commonalty.

Denham. By three originals there cannot be one and the same issue; but each original requires one issue and one judgment; for otherwise the originals would not be served. And besides if Robert and William had pleaded badly, should that be the cause of a charge on and a detriment to the estate of Henry? (*implying that it should not*). Therefore it seems that the bishop ought to answer, for otherwise it would follow that by reason of a minority of the commonalty, the whole commonalty might be charged (which would be incongruous).

Scrope (in agreement). If Robert and William had acknowledged this custom should that acknowledgment be prejudicial to Henry discharging himself of it? No, it should not. Therefore etc. And besides if a writ of trespass be brought against several persons, although one of them has answered for himself, and his answer might perchance exonerate all the others, nevertheless each one will exonerate himself by his own answer[1]; much more then where several persons bring separate writs against one person, is it necessary that each exonerate himself against [the one] person.

Stanton J. If one person has pleaded so as to charge the commonalty by his acknowledgment or otherwise etc. that should not be prejudicial to the others etc. But where you plead in discharge of the commonalty, in such a case the plea of the minority serves for all. So in this case.

Passeley. It would be hard to predict whether by the plea of Robert and William the commonalty will be charged with the custom or discharged before judgment is given etc.

Bereford C.J. If you await judgment on that point, perchance you will not have aid from the commonalty in the opinion of some of us.

Passeley. That is entirely for you to consider; but since Henry is a free man and of free estate etc. (as above).[2]

Bereford C.J. If you took issue on the deeds, and the deeds discharged the whole commonalty, perchance the inquest which is joined for Robert and William might charge the whole commonalty with this custom; and so there would be two contrary judgments on one and the same matter.

Denham. It would not be incongruous, because there are different original writs, and they have pleaded differently.

[1] See note 5 opposite. [2] See p. 122.

III.[1]

Replegiare ou il avowa pur custume sur ses tenaunz saunz afermer q'il furent ses tenaunz.

Henri de Stevingtone et A. de M. et B. de C. se pleyndrent qe l'evesqe de Nichole atort prit etc. par divers brefs.

Malm. avowa etc. par la resoun qe l'evesqe de N. est de Daunton seygnur ou ly e ces predecessours ount une tele custume qe lez tenaunz de Dauntone deyvent un jour en l'an, *scil.* le Lundy prochein après la feste seynt Michel eslire un profot qe serra enterement chargé des issues del manoir e de ceo rendre acounte ; issint qe cesti H. e lez autres ne voleyent point elire le Lundy prochein etc. dreyn passé, issi l'evesqe lez prit adroit e nent atort.

Pass. Vous avowez ceste prise par resoun de une custume e vous ne lyez pas q'il sount voz tenaunz e tenent de vous par les custumes avauntditz. E demaundoms jugement de la forme de ceste avowere.

Ber. Volez ceo pur respounse ; q'il vous dit qe touz les tenaunz de Dauntone deyvent elire un provost e de cele custume l'evesqe e cez predecessours ount esté seisis de tut tens ; e ceo sount il prest de averrer.

Migg. Unqore demaundoms jugement de ceste avowere del houre q'il avowe, pur ceo q'il ne voleient eslire un provost tel jour etc., e il ne aferme pas cele avowere par aukune title etc. e ne dit qe li e cez predecessours ount esté seisis a destreindre quant il ne voleyent eslire, quar avowere encountre commune ley deit estre lyé par seisine du tens dount il n'ad memore ; e de ceo demaundoms jugement.

Herle. Volez ceo pur respounse.

Pass. Nous la pernoms a la forme.

Ber. Coment qe vous la pernez a la forme, la court la tent pur taunt cum ele vaut, qe si nous aloms a jugement ele trenche 'for wynd and for candle.'

Scrop. Donqe vous dioms nous pur H. qe l'evesqe ne put ceste destresce avower, qe nous vous dioms qe un Robert predecessour ceti evesqe en tens le roy Henri graunta par soun fet qe si est a touz lez tenaunz de Dauntone e pur touz iceus qe furent a venir q'il dussent aver la fraunchise en mesme la manere cum ount les citeseyns de Nicole e de ceus de Nicole il n'ount pas tele custume eu. E demaundoms jugement si l'evesqe encountre le fet soun predecessour pusse avowere

[1] From *P.*

III.

Replevin, where the lord avowed upon his tenants for a custom without affirming that they were his tenants.

Henry of [Stiveton] and A. of M. and B. of C. complained by divers writs that the bishop of Lincoln wrongfully took etc.

Malberthorpe avowed etc. for the reason that the bishop of Lincoln is lord of [Louth], where he and his predecessors have this custom, that the tenants of [Louth] ought on one day of the year, to wit, the Monday next after the feast of St. Michael, to choose a reeve who should be entirely charged with the issues of the manor and should render an account thereof. This Henry and the others would not choose a reeve on the Monday next after etc. last past, so that the bishop took the beasts rightly and not wrongfully.

Passeley. You avow this taking by reason of a custom and you do not allege that the plaintiffs are your tenants and hold of you by the customs aforesaid. We ask judgment of the form of this avowry.

Bereford C.J. Will you have this for your reply [to the avowry]; for he tells you that all the tenants of [Louth] ought to choose a reeve, and of this custom the bishop and his predecessors have been seised from all time; and this the bishop is ready to aver.

Miggeley. Still we ask judgment of this avowry seeing that he avows because they would not choose a reeve on a certain day etc., and he does not affirm that avowry by any title etc. nor say that he and his predecessors have been seised of distraining when they would not choose a reeve; for an avowry which is against common law ought to be based on seisin from a time whereof there is no memory. Of this we ask judgment.

Herle. Will you have this for your answer?

Passeley. We take it as an answer to the form of the avowry.

Bereford C.J. Although you take it as an answer to the form, the court takes it for what it is worth. If we go to judgment it will be taken 'for[1] wine and candle.'

Scrope. Still we tell you on behalf of Henry that the bishop cannot avow this distress, for we tell you that one Robert predecessor of this bishop in the time of king Henry granted by his deed, which is here, to all the tenants of [Louth] present and to come that they should have liberties in the same way as the citizens of Lincoln have, and from the citizens of Lincoln the bishop and his predecessors have not had this custom. We ask judgment whether the bishop against the deed of his predecessor can make this avowry. (And he put forward a deed which

[1] The 'wynd' of the text seems to be an error for 'wine.' Cf. vol. iii, pp. lxix, 190, and vol. iv. p. 90.

fere. (E mist avaunt fet qe ceo testmoigne ovesqe confirmacioun del deen e del chapitre de Nicole.)

Herle. Quei ditez vous en droit des autres ?

Scrop. En droit de A. e B. vous dioms qe avaunt le temps le roy H. aiel le roi qe ore est etc. vous n'aviez nule custume e vous dioms qe en tens de mesme le roi q'il y fut un provost qe fit grevaunce a lez gentz de Dauntone issi qe les gentz de la ville parlerent taunt ove le evesqe qe par assent del evesqe qe eus elirront un provost de lever la rente l'evesqe de Dauntone taunt soulement issi qe l'evesqe a ly durreit robe e ly durreit chescun moys un demi quarter de forment. E pur ceo qe l'evesqe se sustret de trover sustenaunce a soun baillif eux lesserent de elire ; e demaundoms jugement, del houre qe ceste custume est a nostre volunté qe fut en temps le roi Henri comencea puis temps de memore si par resoun de custume usé du temps ou nous alleggoms interrupcioun du temps ; e dioms qe avaunt le temps le roi H. n'ount il nule tele custume eu.

Herle. Nous vous dioms qe avaunt le temps le roi Henri e puis le temps saunz interrupcioun nous e noz predecessours avoms eu tele custume du temps dount il n'ad memore. Prest etc.

Pass. Ore al autre respouns qe nous donames pur Henri de Stevingtone ou nous avoms alleggé le fet vostre predecessour.

Herle. A ceo n'avoms mester a respondre ; quar cel respounse qe nous avoms doné chiet a la communalté de Dauntone issi qe si le revers soit trové de nostre dit, *constat* qe touz iceus de la ville sount deschargez. E demaundoms jugement si autre respounse qe tent a mesme le effect serroms chacé a respoundre.

Pass. E nous jugement depuis qe le plee Henry est autre bref ; coment qe A. e B. eyent pledez ceo ne deit cheyr en le plee Henri del houre qe le plee est autre si a H. ne deit il respoundre.

Herle. Coment qe lez brefs soient divers, la cause de l'avowere est une, et tut est un plee ; qe ceo plee qe A. et B. pledent est a descharger la ville de Dauntone, qe si nous fussoms chaces a respoundre al fet qe H. boute avaunt, e trové fut qe le fet ne fut pas tel, issint serroit la ville chargé e par le plee A. et B. deschargé. E issint serroit la ville chargé e deschargé. E demaundoms jugement.

Malm. (*ad idem*). Nous vous dioms qe nous e noz predecessours seisiz de tele custume du temps dount etc.

Pass. Vous veez bien le purport de la chartre e le confermement

witnessed this together with the confirmation of the dean and chapter of Lincoln.)

Herle. What do you say with regard to the other men?

Scrope. With regard to A. and B. we say that before the time of king Henry the grandfather of the king who now is etc., you had no such custom and we tell you that in the time of the same king there was a reeve who harassed the men of [Louth] so much that the men of the town had treaty with the bishop so that by the assent of the bishop [it was agreed] that they should choose a reeve to collect the rents of the bishop at [Louth] provided only that the bishop should give him a robe and should give him every month half a quarter of corn. And because the bishop withdrew from supporting his bailiff they ceased to make their choice. And seeing that this custom is at our pleasure, for it began in the days of king Henry and since the time of legal memory, we ask judgment whether by reason of a custom enjoyed from a time during which we allege interruption [he can avow]. And we say that before the time of king Henry the bishops enjoyed no such custom.

Herle. We tell you that before the time of king Henry and afterwards, we and our predecessors have had this custom uninterruptedly from time immemorial. Ready etc.

Passeley. Now [what do you say] to the other answer which we made on behalf of Henry of Stiveton in which we alleged the deed of your predecessor?

Herle. To that we have no need to answer, for that reply which we have given concerns the commonalty of [Louth], so that if the reverse of what we have said be found, obviously all those of the town are discharged. And we ask judgment whether we should be driven to reply to any other answer to the same effect.

Passeley. And we ask judgment seeing that the plea of Henry is on another writ. Although A. and B. have pleaded this ought not to concern the plea of Henry, since his is another plea. [Judgment] whether the bishop ought not to answer Henry.

Herle. Although the writs are different, the cause of the avowry is one; and it is all one plea; for this plea which A. and B. plead is in discharge of the town of [Louth]; if we were driven to answer the deed which Henry puts forward, and it were found that the deed was not [as they allege it to be], the town would be charged; and by the plea of A. and B. it might be discharged. So the town might be charged and discharged. We ask judgment.

Malberthorpe (on the same side). We tell you that we and our predecessors have been seised of this custom from a time whereof etc.

Passeley. You see well the purport of the charter and the

ovesqe ceo, par quele chartre soun predecessour graunta lez gentz de Dauntone teles fraunchisez e q'il tenysent par mesme lez custumes reservaunt a ly ferage pur sa meyne par quele chartre chescun manere de droit des custumes fut esteint. E demaundoms jugement si a nul averement encountre le fet soun predecessour deyve estre resceu.

Et habuit diem in crastino sancti Martini etc.

The Record of the Case.

De Banco Rolls, 4 Edw. II., Trinity (No. 187), r. 68d., Lincolnshire.

Iohannes episcopus Lincolniensis Iordanus de Foterby et Petrus le Forester summoniti fuerunt ad respondendum Willelmo Mabile de Luda de placito quare ceperunt quandam uaccam ipsius Willelmi et eam iniuste detinuerunt contra uadium etc. Et unde idem Willelmus per attornatum suum queritur quod predicti episcopus et alii die Lune proxima post festum sancti Luce Ewangeliste anno domini regis nunc quarto in uilla de Luda in quodam loco qui uocatur Manmarle ceperunt predictam uaccam et eam iniuste detinuerunt contra uadium etc. quousque etc. Vnde dicit quod deterioratus est et dampnum habet ad ualenciam quadraginta solidorum. Et inde producit sectam etc.

Idem episcopus et alii summoniti fuerunt ad respondendum Rogero Sibile de placito quare ceperunt quamdam uaccam ipsius Rogeri et eam iniuste detinuerunt contra uadium etc. Et unde idem Rogerus per attornatum suum queritur quod predicti episcopus et alii predictis die et anno in loco qui uocatur Galutreforlong in uilla predicta ceperunt predictam uaccam etc. et eam iniuste detinuerunt contra uadium etc. quousque etc. unde dicit quod deterioratus est et dampnum habet ad ualenciam quadraginta solidorum. Et inde producit sectam etc.

Idem episcopus summonitus fuit ad respondendum Henrico de Styueton' de placito quare ceperunt quandam uaccam ipsius Henrici et eam iniuste detinuerunt contra uadium etc. Et unde idem Henricus per attornatum suum queritur quod predicti episcopus et alii predictis die et anno in quodam loco qui uocatur Munkedikewong in predicta uilla ceperunt predictam uaccam et eam iniuste detinuerunt contra uadium etc. quousque etc. Vnde dicit quod deterioratus est et dampnum habet ad ualenciam quadraginta solidorum. Et inde producit sectam etc.

Et episcopus et alii per attornatum suum ueniunt et idem episcopus respondet pro se et aliis. Et defendit uim et iniuriam quando etc. Et bene aduocat predictas capciones et iuste etc. Dicit enim quod ipse est dominus manerii et uille de Lude in qua quidem uilla ipse habet talem consuetudinem a communitate uille predicte sibi debitam etc. scilicet quod homines communitatis predicte singulis annis die Lune proxima post festum sancti Michaelis conuenire debent ad curiam ipsius episcopi ibidem tentam et in curia illa

confirmation with it. By this charter his predecessor granted to the men of [Louth] these liberties, and that they should hold by the same customs as etc., but reserved to the bishop forage for his household ; and by this charter every sort of [then existing] right in customs was extinguished. We ask judgment whether he ought to be received to any averment against the deed of his predecessor.

And they had a day on the morrow of St. Martin etc.

Translation of the Record.

For the reference, see opposite.

John bishop of Lincoln, Jordan of Foterby and Peter the Forester were summoned to answer William Mabile of Louth on a plea wherefore they took a cow belonging to him the said William and wrongfully detained it against gage etc. And whereupon the same William by his attorney complains that the aforesaid bishop and the others on the Monday [1] next after the feast of St. Luke the Evangelist in the fourth year of the lord king who now is, in the town of Louth in a certain place which is called Manmarle took the aforesaid cow and wrongfully detained it against gage etc. until etc. Whereupon he says that he is injured and has damage to the value of forty shillings ; and thereof he brings suit etc.

The same bishop and the others were summoned to answer Roger Sibile on a plea wherefore they took a cow belonging to him the said Roger and wrongfully detained it against gage etc. And whereupon the same Roger by his attorney complains that the aforesaid bishop and the others on the aforesaid day and year in the place which is called Galutreforlong in the town aforesaid took the aforesaid cow etc. and wrongfully detained it against gage etc. until etc. Whereupon he says that he is injured and has damage to the value of forty shillings ; and thereof he brings suit.

The same bishop [and the others were] summoned to answer Henry of Stiveton on a plea wherefore they took a certain cow belonging to him the said Henry and wrongfully detained it against gage etc. And whereupon the same Henry by his attorney complains that the aforesaid bishop and the others on the aforesaid day and year in a certain place which is called Munkedikewong in the aforesaid town took the aforesaid cow and wrongfully detained it against gage etc. until etc. Whereupon he says that he is injured and has damage to the value of forty shillings ; and thereof he brings suit etc.

And the bishop and the others by their attorney come and the same bishop answers for himself and the others. And he denies tort and force when etc., and [the bishop] well avows the aforesaid takings, and rightly etc., for he says that he is the lord of the manor and town of Louth, in which town he has a custom due to him by the commonalty of the town aforesaid etc. to wit, that the men of the commonalty aforesaid in every year on the Monday next after the feast of St. Michael ought to assemble at the court of him the said bishop held there, and in that court before the steward of him the said

[1] 19 October 1310.

The Record of the Case—*continued.*

coram senescallo ipsius episcopi eligere unum hominem de se ipsis essendi in officio prepositi in manerio et uilla predictis per totum annum sequentem, qui bene et fideliter ipsi episcopo deseruiri sciat ad wannagium perficiendum redditus colligendum et compotum suum inde in fine anni reddendum etc. et ad alia per tempus predictum proficienda preposito incumbencia etc. et pro quo preposito predicta communitas uelit respondere etc. De qua consuetudine ipse episcopus et predecessores sui episcopi etc. seisiti fuerunt a tempore cuius non extat memoria etc. Et quia predicti Willelmus Rogerus et Henricus homines communitatis predicte et ceteri de eadem communitate ad curiam ipsius episcopi ibidem tentam die Lune proxima post festum sancti Michaelis anno domini regis nunc quarto huiusmodi prepositum etc. eligere recusarunt per quod idem episcopus seruicium prepositi amisit etc. idem episcopus distrinxit predictos Willelmum Rogerum et Henricum tanquam homines communitatis etc., uidelicet quemlibet eorum per unam uaccam et occasione predicta etc. Et ita aduocat ipse predictas districciones iustas super ipsos Willelmum Rogerum et Henricum homines communitatis predicte quos similiter distrinxit pro predicta consuetudine a predicta communitate eidem episcopo debita etc. et que ei aretro fuit ut predictum est etc.

Et predicti Willelmus et Rogerus quo ad districciones super ipsos factas etc. dicunt quod predictus episcopus illas iustas aduocare non potest in forma predicta etc. Dicit enim quod cum predictus episcopus allegat titulum iuris sui in hac parte per seisinam continuatam etc. ut predictum est, idem episcopus et predecessores sui fecerunt prepositos suos in uilla predicta pro uoluntate sua absque eleccione uillate predicte usque tempus domini Henrici quondam regis Anglie aui domini regis nunc, tempore cuius regis quidam episcopus predecessor etc. quemdam fecerat prepositum suum ibidem qui maliciose se gerebat in officio prepositi et homines uille predicte ita diuersimode grauabat quod idem episcopus tunc per querelam hominum predictorum sibi factam concessit eisdem hominibus suis ut eligere possent prepositum etc. Vnde bene defendunt quod predecessores predicti episcopi nunc non fuerunt de predicta custuma etc. seisiti a tempore quo non extat memoria sicut predictus episcopus asserit etc. Et hoc petunt quod inquiratur per patriam. Et predictus episcopus similiter etc.

Et predictus Henricus de Styueton' quo ad districcionem super ipsam factam dicit quod predictus episcopus iniuste aduocat etc. Dicit enim quod quidam Robertus quondam episcopus Lincolniensis predecessor etc. concessit hominibus uille predicte de Luda quod ipsi haberent et tenerent easdem libertates et consuetudines quas habent ciues regis ciuitatis Lincolnie per cartam ipsius R. episcopi etc. quam profert in hec uerba :—Robertus dei gracia Lincolniensis episcopus capitulo beate Marie Lincolnie Waltero Dapifero hominibus suis omnibusque fidelibus dei tam presentibus quam futuris salutem Quoniam ratum esse uolo quod hominibus meis de Luda concessum est Noueritis uniuersitas uestra me eisdem hominibus meis concessisse et presenti carta mea confirmasse easdem libertates easdem consuetudines et

Translation of the Record—*continued.*

bishop to choose a man from themselves to be in the office of reeve of the manor and town aforesaid throughout the whole year following: who was able well and faithfully to serve him the said bishop in completing his wainage, collecting his rents, and rendering etc. his account therefor at the end of the year, and doing other things during the period aforesaid incumbent on a reeve etc., and for which reeve the aforesaid commonalty would be willing to answer etc.; and of this custom he the said bishop, and his predecessors being bishops etc., were seised from time immemorial etc. And because the aforesaid William, Roger and Henry, men of the commonalty aforesaid and the rest of the same commonalty at the court of him the said bishop held there on Monday next after the feast of St. Michael in the fourth year of the king who now is, refused to elect such a reeve etc., whereby the same bishop lost the service of a reeve etc., the same bishop distrained the aforesaid William, Roger and Henry as men of the commonalty etc. to wit, each one of them by one cow, and for the reason aforesaid etc. And thus he avows the aforesaid distresses as right upon them the said William, Roger and Henry, men of the commonalty aforesaid, whom likewise he distrained for the aforesaid custom due etc. by the aforesaid commonalty to the same bishop etc., and which custom was in arrear to him as aforesaid etc.

And the aforesaid William and Roger as to the distresses made upon them etc. say that the aforesaid bishop cannot avow them as rightful in the form aforesaid etc.; for [they] say that whereas the aforesaid bishop alleges the title of his right in this behalf by continued seisin etc. as is aforesaid, the same bishop and his predecessors made their reeves in the town aforesaid at their will without election by the township aforesaid until the time of Henry sometime king of England grandfather of the lord king who now is; and in the time of this king a certain bishop, predecessor etc. made a certain man his reeve there, who bore himself so evilly in the office of reeve and so harassed the men of the aforesaid town in divers manners that the same bishop then at the complaint made to him by the men aforesaid, granted to his same men that they should choose a reeve etc. Whereupon they well deny that the aforesaid predecessors of the bishop who now is were seised of the aforesaid custom etc. from the time of which there is no memory, as the aforesaid bishop asserts etc. And they seek that this may be inquired by the country etc.; and the aforesaid bishop likewise etc.

And the aforesaid Henry of Stiveton as to the distress made upon him says that the aforesaid bishop wrongfully avows etc.; for he says that a certain Robert sometime bishop of Lincoln predecessor etc. granted to the men of the aforesaid town of Louth that they should have and hold the same liberties and customs as have the citizens of the king of the city of Lincoln, by the charter of him the said Robert the bishop etc. which he proffers, in these words:—Robert[1] by the grace of God bishop of Lincoln to the chapter of the Blessed Mary of Lincoln to Walter the Steward to his men and all the faithful servants of God as well present as to come, greeting. Whereas I wish ratified what has been granted to my men of Louth, know all ye that I have granted and with my present charter have confirmed for ever to these same my men and to all who shall come to dwell in Louth that they may have

[1] This is Robert de Chesny, bishop of Lincoln from 1147 to 1168.

The Record of the Case—*continued.*

omnibus qui in Luda mansuri uenerint imperpetuum habendas quas habent ciues regis in ciuitate Lincolnie Quare uolo et firmiter precipio quatenus per omnia easdem teneant consuetudines et habeant libertates ; sciendum uero est saluis libertatibus suis quod familie mee foragium debeant inuenire. Profert eciam quamdam cartam sub nomine capituli Lincolnie per quod idem capitulum predictam concessionem confirmauit per hec uerba : Capitulum beate Marie Lincolnie omnibus fidelibus dei tam presentibus quam futuris salutem. Nos capud nostrum sequentes libertates et consuetudines ciuitatis Lincolnie sicut dominus noster Robertus Lincolniensis episcopus concessit et carta sua confirmauit concedimus et carta nostra confirmamus hominibus de Luda et hiis qui ibi mansuri uenerint imperpetuum habendas etc. Unde dicit quod, cum ipse et alii homines predicte uille de Luda per concessionem predictam onerari non debeant uersus ipsum episcopum de aliis consuetudinibus quam ciues predicti etc. qui quidem ciues non faciunt huiusmodi custumam etc. prout paratus est uerificare etc. petit iudicium si predictus episcopus nunc contra concessionem et confirmacionem predictas predictam custumam exigere possit etc.

Et episcopus dicit quod predicta carta iuri ipsius episcopi nunc et ecclesie sue quo ad predictam consuetudinem etc. in nullo preiudicare debet etc. maxime cum carta illa non extinguit consuetudinem predictam nec ex tenore eiusdem carte elici seu intelligi potest aliqua uia iuris ad acquietandam seu ipsam communitatem inde exonerandam etc. Unde cum idem episcopus seisinam suam et predecessorum suorum episcoporum etc. continuatam a tempore cuius non extat memoria de consuetudine predicta etc. paratus sit uerificare etc. quam uerificacionem predictus Henricus non admittit etc. nec aliud allegat ad predictam consuetudinem extinguendam etc. nisi tantum quod profert cartam predictam per cuius tenorem nulla acquietancia seu exoneracio etc. ipsi Henrico seu aliis de comunitate predicta accrescere potest in hoc casu petit iudicium etc. Et predictus Henricus quesitus per iusticiarios etc. si uelit predictam uerificacionem quam predictus episcopus pretendit etc. expectare, dicit quod non, set uerificacionem illam recusando, petit iudicium super allegacionem predicte carte etc.

Dies datus est predicto Henrico et episcopo de audiendo inde iudicio suo hic in octabis sancti Michaelis etc. Et similiter idem dies datus est predictis Willelmo et Rogero et eidem episcopo quo ad uerificacionem quam iidem Willelmus et Rogerus superius pretendebant etc. eo quod curia uult preuideri utrum predicta uerificacio sit admittenda in hoc casu sine predicta comunitate etc.

Postea ad diem illum uenerunt partes predicte per attornatos suos etc. et quia uidetur curie quod predicti Willelmus Rogerus et Henricus homines communitatis predicte non possunt rem istam que uniuersaliter tangit tam alios homines predicte communitatis quam ipsos Willelmum Rogerum et Henricum deducere in iudicium sine ipsa communitate etc. preceptum est

Translation of the Record—*continued.*

the same liberties and the same customs as have the king's citizens in the city of Lincoln. Wherefore I will and firmly bid you that in all things they hold these same customs and have these same liberties. But be it known that their liberties being assured they ought to find forage for my household. He proffers also a certain charter under the name of the chapter of Lincoln, by which the same chapter confirmed the aforesaid grant by these words :— The chapter of the Blessed Mary of Lincoln to all God's faithful men as well present as to come greeting. We following our Head grant and with our charter confirm the following liberties and customs of the city of Lincoln, as our lord Robert the bishop of Lincoln granted them and with his charter confirmed them to the men of Louth and those that shall come to dwell there, to have them for ever etc. Whereupon he says that, since he and the other men of the aforesaid town of Louth by the grant aforesaid ought not to be charged as against him the said bishop with other customs than the aforesaid citizens do etc. which citizens, as he is ready to aver etc., do no such custom etc. he asks judgment whether the aforesaid bishop who now is against the aforesaid grant and confirmation can demand the aforesaid custom etc.

And the bishop says that the aforesaid charter ought in no way to prejudice etc. the right of him the said bishop who now is and the right of his church as regards the aforesaid custom etc., especially as that charter has not extinguished the custom aforesaid nor by the tenor of the same charter can it be understood in any rightful way to acquit or discharge the same commonalty thereof etc. Whereupon since the same bishop is ready to aver etc. his seisin of the custom aforesaid and the seisin of his predecessors bishops etc. continued from a time whereof there is no memory ; and since the aforesaid Henry does not admit this averment etc. and alleges nothing in extinguishment etc. of the aforesaid custom etc. except only that he proffers the aforesaid charter, by the tenor of which no acquittance nor exoneration etc. can accrue in this case to him the said Henry or others of the aforesaid commonalty, he asks judgment etc. And the aforesaid Henry being asked by the justices etc. whether he is willing to accept the aforesaid averment which the aforesaid bishop tenders etc., says that he is not willing, but refusing it, asks judgment upon the allegation of the aforesaid charter etc.

A day is given to the aforesaid Henry and the bishop for hearing their judgment thereon here on the octave of St. Michael etc. And likewise the same day is given to the aforesaid William and Roger and the same bishop as regards the averment which the same William and Roger tendered above etc., on the ground that the court wishes to be advised whether the aforesaid averment should be admitted in this case without the aforesaid commonalty etc.

Afterwards at that day the aforesaid parties came by their attorneys etc. and because it seems to the court that the aforesaid William, Roger and Henry, men of the commonalty aforesaid, cannot bring this matter, which touches generally as well the other men of the aforesaid commonalty as them the said William, Roger and Henry, into judgment without the same commonalty etc., the sheriff is ordered to summon etc. the aforesaid

The Record of the Case—*continued.*

uicecomiti quod summoneret etc. predictam communitatem quod sit hic a die sancti Hilarii in quindecim dies ad sequendum simul etc. si sibi uiderit expedire etc. Idem dies datus est partibus predictis per attornatos suos etc. prece querencium etc.

Ad quem diem predicta communitas ad tria breuia predicta summonita ad respondendum simul etc. fuit essoniata, et habuit diem per essoniatores suos hic ad hunc diem scilicet a die Pasche in tres septimanas per iusticiarios. Idem dies datus fuit predictis Willelmo Rogero et Henrico etc. Et modo uenerunt tam iidem Willelmus Rogerus et Henricus quam predictus episcopus per attornatos suos. Et communitas non uenit. Ideo predicti Willelmus Henricus et Rogerus respondeantur sine etc. Et datus est dies predictis Henrico et episcopo hic a die sancte Trinitatis in quindecim dies etc. per L. de Thrik. eo quod iudicium nondum etc. Et similiter idem dies datus est predictis Willelmo et Rogero et eidem episcopo quo ad predictam uerificacionem expectandam etc.

Postea ad diem illum uenit predictus episcopus per attornatum suum et optulit se quarto die uersus predictum Rogerum de predicto placito et ipse non uenit et fuit querens et habuit diem hic ut superius patet. Ideo consideratum est quod predictus episcopus quo ad ipsum [eat] inde sine die. Et Rogerus et plegii sui in misericordia. Et episcopus habeat returnum predicte uacce etc.

Et idem episcopus et Willelmus per attornatos suos ad eundem diem uenerunt hic et similiter iuratores de consensu parcium electi qui dicunt super sacramentum suum quod predictus episcopus et omnes predecessores sui a tempore quo non extat memoria seisiti fuerunt habendi quendam prepositum ad proximam curiam in uilla predicta post festum sancti Michaelis tentam per uillam predictam electum et eidem episcopo per unum annum sequentem in officio prepositure deseruientem per custumam predictam. Ideo consideratur quod predictus [episcopus] eat sine die et Willelmus nichil capiat per iuratam istam set sit in misericordia. Et episcopus habeat returnum predicte uacce etc.

Postea ad predictam quindenam sancte Trinitatis anno regis nunc quinto predictus episcopus per attornatum suum uenit et optulit se quarto die uersus predictum Henricum de predicto placito etc. Et ipse non uenit et fuit querens et habuit diem hic prout superius patet in rotulo. Ideo consideratum est quod predictus episcopus [eat] inde sine die et Henricus et plegii sui de prosequendo in misericordia, et episcopus habeat returnum predicte uacce Et querantur nomina plegiorum etc.

Translation of the Record—*continued.*

commonalty that it be here on the quindene of St. Hilary to sue together with etc. if it seem good to them. The same day is given to the parties aforesaid by their attorneys etc. at the prayer of the plaintiffs etc.

At which day the aforesaid commonalty summoned on the three writs aforesaid to answer together with etc. was essoined, and it had as a day by its essoiners here, this day, to wit, three weeks from Easter, by the justices. The same day was given to the aforesaid William, Roger and Henry etc. And now came as well the same William, Roger and Henry as the aforesaid bishop by their attorneys. And the commonalty did not come. Therefore let the aforesaid William, Henry and Roger answer without it etc. And a day is given to the aforesaid Henry and the bishop here fifteen days from the Holy Trinity etc. by Lambert of Trikingham, on the ground that judgment has not yet etc. And likewise the same day is given to the aforesaid William and Roger and the same bishop as regards awaiting the aforesaid averment etc.

Afterwards at that day came the aforesaid bishop by his attorney and offered himself on the fourth day against the aforesaid Roger on the aforesaid plea and Roger did not come and he was plaintiff, and he had a day here as appears above. Therefore it is awarded that the aforesaid bishop as regards Roger go thereof without day and that Roger and his pledges be in mercy. And let the bishop have the return of the aforesaid cow etc.

And the same bishop and William by their attorneys came here at that same day, and likewise the jury chosen by the consent of the parties, who say upon their oath that the aforesaid bishop and all his predecessors from a time whereof there is no memory were seised of having a certain reeve chosen by the town aforesaid at the court in the aforesaid town held next after the feast of St. Michael, and serving the same bishop for one year following in the office of reeve by the custom aforesaid. Therefore it is awarded that the aforesaid bishop go thereof without day, and that William take nothing by this jury, but be in mercy. And let the bishop have the return of the aforesaid cow etc.

Afterwards on the aforesaid quindene of the Holy Trinity in the fifth year of the king who now is, the aforesaid bishop came by his attorney and offered himself on the fourth day against the aforesaid Henry on the aforesaid plea etc. And Henry did not come and he was plaintiff, and he had a day here as appears above on the roll. Therefore it is awarded that the aforesaid bishop go thereof without day and that Henry and his pledges of prosecuting his plea be in mercy. And let the aforesaid bishop have the return of the aforesaid cow. And let the names of the pledges be sought etc.

31. THEYN *v.* GRENDALE.

I.[1]

Bref porté en courte de baroun; et fut remué par cause qe fut trové nul; et si demura le play nent retourné etc.

Un Adam porta son bref de dreit en la court[2] B. devers C. E. et D. etc. et counta vers chesqun severalment.

C. respoundi et dit q'il tient par la ley d'Engleterre del heritage un F. saunz qi etc. et pria eide etc. (*et habuit*). Et suist un somons al baillif etc. qe returna[3] q'il n'avoit terre ne[4] tenementz dount estre somounz[5] en sa jurisdiccioun; par quei vynt C. en la chauncellerie et purchacea un *recordare* a remuer la parole en banke. Et fut la cause del remuement, pur ceo qe celuy q'il avoit prié etc. n'avoit terre etc.

Et nota qe cele cause fut nule, qar tut n'out il terre etc. dount estre somounz[5] etc. si deveroit il estre somounz[5] en[6] la terre q'est en demaunde et pur quele[7] terre il est prié en eide. Et ceo de comune dreit et ley de terre etc.

Ing. Vous avetz entendu coment il ount purchacé ceo *recordare* qe veot, 'Loquelam inter A. petentem et C. E. et D. tenentes.' Sire la vous dioms nous qe le bref original est porté vers iij, issi qe un counte gist severalment vers chesqun tenaunt et[8] several response gist a[9] chesqun tenant et chesqun porra diverses issues prendre pur ceo qe l'original veot 'unde talis tantum, talis tantum etc. ei deforciat.' Et ceo suppose diverses tenauntz et nent joynt tenauntz donqe dust il avoir dit en son *recordare* etc.[10] *recordare loquelas* etc. et nyent *loquelam* com il n'ust q'un[11] soul tenaunt. Jugement etc.

Et ceste excepcion ne fut pas[12] allowé des Justices, *quia breue originale est unum in se.*

Inge. Unqore nous demaundoms jugement du bref qe la cause de remuement ne se lie forqe entre le demaundant et un des tenauntz[13] et il ad par cele *recordare* remué la parole q'est entre[14] toux les tenauntz en supposant qe cele est cause de remuement entre le demandant et toux les tenauntz. Jugement.

[1] From *B* collated with *G* and *R*; and with the latter part of the text in *M*. See note 2, p. 131. The earlier part of the report in *M* is printed separately. [2] *Om.* court, *Ins.* et de *R.* [3] returnera *R.* [4] *Om.* ne *B.* [5] somonz *G*, somouns *R.* [6] su *G*, sur *R.* [7] ceo qe le *R.* [8] *Om.* et *R.* [9] vers *B*, a *G*, *R.* [10] *Om.* etc. *G.* [11] com un *G*, comme un *R.* [12] nent *G*, *R.* [13] *Ins.* et nent entre le demaundant et toux les tenauntz *G*, *R.* [14] *Ins.* ly et *R.*

31. THEYN *v.* GRENDALE.

I.

A writ brought in a court baron. It was removed for a cause which was found to be bad. The plea remained in the king's court and was not returned etc.

[Thomas and Geoffrey] brought their writ of right in the court of [the abbot of Thorney] against [Richard of Grendale and Walter of Seggeham and another],[1] and counted against each of them severally.

[Walter] answered and said that he held by the law of England of the inheritance of one [Ralph] without whom etc., and he prayed aid of him etc.; (and he had aid). And Walter sued a summons to the bailiff etc. who returned that Ralph had not land or tenements on which he could be summoned in his jurisdiction. Upon this Walter came into the chancery and purchased a *recordari* to remove the cause into the Bench. And the cause of the removal was, that he whom he had prayed in aid had not land etc.

And note that this cause was bad, for although he had no land etc. whereon he could be summoned etc. yet he ought to be summoned on the land which is in demand, and for which he is prayed in aid. And this is of common right and the law of the land etc.

Hengham. You have heard how they have purchased this *recordari*, which speaks of the cause between A. demandant and C. E. and D. tenants. Sir, we tell you that the original writ was brought against three, so that one count lies severally against each tenant; and a several answer lies for each tenant; and each one can take different issues, because the original says 'whereof such an one deforces him of so much'; [and] 'such another of so much etc.' And this supposes different tenants and not joint tenants. Therefore he should have said in his *recordari* etc. 'Record the causes' etc. and not 'the cause,' as if there were but one sole tenant. We ask judgment etc.

And this exception was not allowed by the Justices, because the original writ is a single thing in itself.

Hengham. Still we ask judgment of the writ, for the reason of the removal is a matter between the demandant and one of the tenants only; and he has by this *recordari* removed the cause which is between [the demandant and] all the tenants, thus supposing that [there is a reason for the removal between the demandant and all the tenants]. We ask judgment.

[1] According to the report there were three tenants in the court baron; the Record, however, mentions two only.

Pass. C'est un bref en soy et a un bref suffit une cause de remuement.

Ing. Chesqun des tenauntz se purra eider par diverse respons et prendre a diverse issue, donqe il semble q'il sount d'autiel estat com si diverses brefs feussent portez devers[1] eux.

Ber.[2] Quei dit le bref original ? Ne dit il ? ' Precipimus tibi etc.' N'est ceo un comaundement[3] etc. ? Et puys dit ' quod plenum rectum teneas A. etc.' et en tant suppose qe l'accioun et le droit meisme celuy A. est un en soy.[4] Et issi nous semble qe le bref est un et nent diverses brefs.

Pass. Tute est une parole, coment qe yl y ount iij diverses tenauntz.

Ing. (*ut supra*). Jugement etc.

Ber.[5] Coment vodrez vous qe le bref fust party en ij et qe la moigté del original demurat[6] etc. et l'autre fust remué ? ou qe le seal et la cire fust remué et qe l'escrowet demorast ?

Ing. Sire, nanil, mesqe tote la parole demorast.[7]

Ber. Dites outre.

Ing. La cause pur[8] la quele il ount remué ceste parole est nule, qe de[9] comune dreit et ley de terre si doit celuy q'est prié en eide estre somoné *super tenementa petita* et il le ount remoué pur ceo q'il n'ad etc. dount estre etc. qe n'est mye cause. Jugement s'il puissent ceynz par ceo *recordare* pleder.

Ber. La parole est ceynz. Quidez vous d'aver la hors saunz encheson, pur quei[10] ? (*quasi diceret,* Noun). Et d'altre part il n'y ad yci seignur ne baillif pur chalenger ne demaunder la court. Si nous ne vousissoms le plee tenir ou devendreit il ? Estre ceo[11] le seignour poet aver relessé la courte.

Pass. Ceo serroit enchesoun etc.

Et furent agardé a respoundre et le demaundaunt counta devers le tenant et il demaunda la vewe. (*Et habuit etc.*)

Et fut le cas tiel qe le tenant par la ley d'Engletere a qi suyte la parole fut etc.[12] ne suyt poynt, eynz un des autres.[13]

[1] divers *B, G.* [2] From here this report is collated with *M.* See note 1, p. 130. [3] *Ins.* qe va au seignur *M.* [4] *Om.* en soy *M.* [5] *Om. Ber. B, G.* [6] *Ins.* en la court *M.* [7] *Om.* mesqe . . . demorast *M.* [8] par *B, R.* [9] *Om.* de *R.* [10] *Om.* pur quei *M, R.* [11] *For* estre ceo *subs.* Item *M.* [12] remué *R.* [13] *Ins.* tenauntz etc. *M.*

Passeley. This is a writ in itself; and for one writ, one reason for removal suffices.

Hengham. Each of the tenants can aid himself by a different answer, and can take a different issue. Therefore it seems to us as if they were in just such a case as if different writs were brought against them.

Bereford C.J. What does the original writ say? Does it not say: 'We command thee etc.'? Is not this a commandment etc.? And then it says 'that thou holdest full right to A. etc.,' and thereby supposes that the action and the right of this same A. is a single thing in itself. Therefore it seems to us that the original is one writ and not divers writs.

Passeley. It is all one cause, although there are three different tenants.

Hengham (as above). Judgment etc.

Bereford C.J. How would you have it? that the writ be divided into two, and that one moiety of the original should remain [in the court baron]; and the other be removed here? or that the seal and the wax should be removed here, and that the parchment remain there as an escrow?

Hengham. No, Sir; but that the cause should remain there as a whole.

Bereford C.J. Say something else.

Hengham. The reason for which they have removed this cause is bad; for by common right and the law of the land, he who is prayed in aid ought to be summoned upon the tenements in demand; and they have removed this cause because he has no land etc. whereon he could be summoned etc., which is no reason for removal. We ask judgment if they can plead here by this *recordari.*

Bereford C.J. The cause is here. Do you think to have it out without occasion? Why should you? (*implying*, You will not); and on the other hand neither the lord nor his bailiff is here to claim or crave his court. If we did not wish to hold the plea what would become of it? Moreover the lord could have released his court.

Passeley. That would be an occasion etc.

And it was awarded that they answer; and the demandant counted against the tenant and he asked for view [1] (and he had it etc.)

And the case was this. The tenant by the law of England at whose suit the cause was removed did not sue, but one of the others.

[1] The Record shows that Walter, at whose instance the cause was removed, entered no appearance in the Common Bench and that it was Richard who asked for view.

II.[1]

Un Adam porta bref de dreit en la court B. vers C. et D. et E. et counta vers chescun severalment.

C. respount et dit q'il tent sa tenaunce par la ley d'Engleterre del heritage un F. sanz qi ele ne put a cesti bref de dreit respondre, et pria eide (*et habuit*). Suwy de somondre celi qe fut prié etc. Retourné q'il n'avoit terres ne tenementz dont estre somoné en cele jurisdiccioun, par quei vint mesme celi Clement[2] tenaunt par la ley d'Engleterre a la chauncellerie ; et fit la suggestioun coment il fut enpledé et coment il pria eide etc. coment la court n'avoit pas power de fere venir cesti qe fut prié et q'il ne poeit a cesti bref de dreit estre partie sanz ly. Et tut put il soul estre partie, il ne put par cas sauver la tenaunce sanz ly, qe pout autre response doner en barre come quitecleime mettre avaunt ou a autre chose dire pur barrer le demaundaunt, qe ne girreit mye en la bouche le tenaunt, par quei il purchase le *recordare*, teille :—Recordare facias loquelam que est in curia uestra per breue nostrum de recto inter A. petentem et C. et D. tenentes.

Hingham. Sire, vous avez bien entendu coment il ount purchacé ceo *recordare*, et dit ' loquelam que est inter A ' demaundaunt ' et C. et D.' tenauntz, Sire, la vous dioms nous qe le bref original de dreit est porté vers iij, dont le bref original veot ' unde talis tantum ei deforciat, et talis tantum,' et vers chescun covendra counter un counte severalment et chescun several respons avereit, et chescun purreit divers responses doner et divers issue prendre dont il deust aver dit en le *recordare* ' Facias loquelas ' et nent ' loquelam ' auxi com s'il n'ust com un soul tenaunt. Jugement etc.

Et cest excepcioun ne fut pas allowé des Justices.

Hing. Sire, unqore jugement etc. qe la ou il dit ' loquelam que est inter A. petentem et C. et D. et E.,' et ad mis certein cause la quele ne se lye fors entre le demaundaunt et C. tenaunt par la ley d'Engleterre et nent entre le demaundaunt et les autres ij tenauntz, et il ad par cesti bref remwé la parole q'est entre le demaundaunt et touz les tenauntz par cele cause, en supposaunt q'est cause de remwement entre le demaundaunt et checun des tenauntz. Jugement.

Pass. Un bref en sey.

Hing. Les tenauntz averount several respouns et chescun prendra

[1] From *M* (fol. 43 v°). [2] An incorrect expansion of C.

II.

One Adam brought a writ of right in the court of B. against C. D. and E. and counted against each of them severally.

C. answered and said that he held his tenancy by the law of England of the inheritance of one F. without whom he could make no answer to this writ of right; and he prayed aid, (and he had it). He sued a summons against him who was prayed etc. It was returned that F. had no lands or tenements, whereon he could be summoned in this jurisdiction. Thereupon this same Clement, tenant by the law of England, came to the chancery, and made the suggestion that he was impleaded and that he had prayed aid etc., that the court baron had no power to make the man come who was prayed in aid, and that he could not be a party to this writ of right without this man; and although he might be a party alone, he might not perchance be able to save the tenancy without this man who might give another reply in bar as by putting forward a quitclaim, or saying some other thing to bar the demandant, which would not lie in the mouth of the tenant. Therefore he purchases the *recordari*, thus :—Cause to record the cause (*loquelam*) which is in your court by our writ of right between A. the demandant and C. and D. tenants.

Hengham. Sir, you have heard how they have purchased this *recordari*, and speak of ' the *cause* ' which is between A. the demandant and C. and D. the tenants. We tell you that the original writ of right was brought against three persons, of whom the original writ says ' whereof such a one deforces him of so much, and such a one of so much etc.' Against each one must he severally count a count; and each tenant should have his separate answer; and each one should be able to give different answers, and join different issues. Therefore he should have said in the *recordari* ' Cause to record the *causes*,' and not the ' cause,' as if there were only a single tenant. We ask judgment etc.

And this exception was not allowed by the Justices.

Hengham. Sir, still we ask judgment etc.; for where he speaks of ' the cause which is between A. the demandant and C. and D. and E.' and has clearly stated a reason for the removal which obtains only between the demandant and C. the tenant by the law of England, and not between the demandant and the other two tenants, he has by this writ of *recordari* removed for this reason the cause which is between the demandant and all the tenants, thus supposing that there is one reason for the removal as between the demandant and each one of the tenants. We ask judgment.

Passeley. The original is all one writ.

Hengham. The tenants will have separate answers and they will

divers issues, dont piert il qe sount auxi com divers brefs et qe le demaundaunt contereit un counte vers chescun etc. *ut supra.*

. . . . . .

This report continues as in B. *See note* 1, *p.* 130 (*left*).

The Record of the Case.

De Banco Rolls, 4 Edw. II., Trinity (No. 187), r. 237d., Huntingdonshire.

Thomas Theyn senior et Galfridus Auicessone alias in curia abbatis de Thorneye de Iakele pecierunt uersus Ricardum de Grendale unum messuagium triginta acras terre et quinque acras prati cum pertinenciis in Yakesle et uersus Walterum de Seggeham triginta acras terre et quinque acras prati cum pertinenciis in eadem uilla ut ius etc. per breue de recto patens etc. ita quod ad peticionem predicti Walteri preceptum fuit uicecomiti quod assumptis secum quatuor discretis et legalibus militibus de comitatu etc. in propria persona sua accederet ad predictam curiam etc. et in plena curia illa recordare faceret loquelam predictam etc. et recordum illud haberet hic in octabis Purificacionis Beate Marie proximo preteritis sub sigillo etc. et sigillis etc. quia predictus Walterus placitando in curia predicta asserit se inde tenere predictas triginta acras terre et quinque acras prati per legem Anglie tantum post mortem Iohanne de Seggeham quondam uxoris sue matris Radulfi de Seggeham cuius heres ipse est de hereditate predicti Radulfi forinceci qui terras uel tenementa infra dominium predicti abbatis non habet ubi summoniri potest de eodem Radulfo peciit auxilium secundum legem et consuetudinem regni regis uersus prefatos Thomam et Galfridum propter quod loquela illa in eadem curia secundum legem et consuetudinem etc. ulterius deduci non potest. Ad quem diem uicecomes mandauit quod uicecomes recordare fecit loquelam etc. et quod prefixit diem partibus etc. Et partes predicte ad diem illum fuerunt hinc inde essoniati etc. Et habuerunt diem per essoniatores suos hic ad hunc diem etc. Et modo ueniunt tam predicti Thomas et Galfridus per Galfridum de Yakesle attornatum suum quam predictus Ricardus per Willelmum Ganet attornatum suum. Et iidem Thomas et Galfridus petunt uersus predictum Ricardum predicta messuagia triginta acras terre et quinque acras prati ut ius etc. per predictum breue de recto etc. Et unde dicunt quod quidam Henricus antecessor suus fuit seisitus de predictis tenementis ut de feodo et iure tempore pacis tempore domini H. regis aui domini regis nunc capiendo inde explecia ad ualenciam etc. et de ipso Henrico quia obiit sine herede de se descendit ius etc. quibusdam Alicie et Auicie ut sororibus et heredibus et de ipsa Alicia descendit ius propartis sue isti Thome qui nunc petit simul etc. ut filio et heredi. Et de ipsa Auicia descendit ius propartis sue isti Galfrido qui nunc petit simul etc. ut filio et heredi. Et quod tale sit ius suum offerunt etc.

Et Ricardus petit inde uisum. Habeat. Dies datus est eis hic a die sancti Martini in quindecim dies etc. Et interim etc.

each join different issues, and therefore it appears that there are as many different writs [as there are tenants], and that the demandant should count one count against each etc. (as above).

This report continues as in B. *See note* 1, *p.* 130 (*left*).

Translation of the Record.

For the reference, see opposite.

Thomas Theyn the elder and Geoffrey Avicessone heretofore in the court of the abbot of Thorney at Yaxley demanded against Richard of Grendale one messuage thirty acres of land and five acres of meadow with the appurtenances in Yaxley and against Walter of Seggeham thirty acres of land and five acres of meadow with the appurtenances in the same vill as their right etc. by writ of right patent etc. so that at the request of the aforesaid Walter the sheriff was ordered taking with him four discreet and law-worthy knights of the county etc. in his own person to approach the aforesaid court etc. and in that full court cause the aforesaid cause to be recorded etc. and to have that record here on the octave of the Purification of the Blessed Mary last past under the seal etc. and the seals etc., for the reason that the aforesaid Walter in pleading in the aforesaid court asserted that he holds the aforesaid thirty acres of land and five acres of meadow by the law of England only (since the death of Joan of Seggeham sometime his wife the mother of Ralph of Seggeham, whose heir Ralph is) of the inheritance of the aforesaid Ralph a stranger who has not lands or tenements within the lordship of the aforesaid abbot on which he can be summoned and prayed aid according to the law and custom of the king's realm of the same Ralph against the aforesaid Thomas and Geoffrey on account of which that cause could not according to the law and custom etc. be further treated in the same court. At which day the sheriff sent word that he had caused that cause to be recorded etc., and that he had appointed a day for the parties etc. And the parties aforesaid at that day on either side were essoined etc. And they had a day by their essoiners here on this day etc. And now come as well the aforesaid Thomas and Geoffrey by Geoffrey of Yaxley their attorney as the aforesaid Richard by William Ganet his attorney. And the same Thomas and Geoffrey demand against the aforesaid Richard the aforesaid messuages thirty acres of land and five acres of meadow as their right etc. by the aforesaid writ of right etc. And whereupon they say that one Henry their ancestor was seised of the aforesaid tenements as of fee and of right in time of peace in the time of king Henry III. by taking thereof the profits to the value etc. And from him the said Henry because he died without an heir of his body descended the right etc. to a certain Alice and a certain Avice as sisters and heiresses; and from her the said Alice descended the right of her share to this Thomas who now demands together etc. as son and heir; and from her the said Avice descended the right of her share to this Geoffrey, who now demands together etc., as son and heir. And that such is their right they offer etc.

And Richard demands view thereof. Let him have it. A day is given them here on the quindene of St. Martin etc. And meanwhile etc.

32. THE PRIOR OF LENTON *v.* SHALDEFORD.[1]

Trespas fondu sour le statut de Marleberge capitulo penultimo biens et chateuz enportez de un priour ; ou le bref fust chalengé en plusours pointz et agardé bon.

Le priour de Lenton' porta son bref de trespas fondu sur statut de Marleberg devers la persone de Bangore etc. :—' quare ui et armis bona et catalla domus et ecclesie ipsius prioris ad ualenciam etc. ad graue dampnum etc. et contra pacem nostram etc.' Et counta[2] q'il prist[3] leynes et aneyus.[4]

Herle. Jugement de cestuy bref, q'il n'ad mye un forme du counte[5] de chatel vif et de chatele mort ; et si[6] ad counté, q'il pristrent aigneux et emporterent, ou il poet aver dit en son bref, *quare aueria sua cepit et abduxit.*

Brab. Il ad counté de leynes et aigneux qe purront auxi bien estre emportéz com enchacéz ; par quei dites outre.[7]

Herle. Unqore demaundoms jugement, qar il veot *bona et catalla domus et ecclesie etc.*, ou proprement[8] propreté du chatele ne demoert pas al eglise, eynz[9] al priour. Jugement.

Malm. Nostre bref nous est doné par statut, et nous avoms servy[10] l'estatut.[11] (Et fut ousté.)

Pass. Unqore nous demaundoms jugement de la forme de cestuy bref qe l'estatut veot qe homme eit recoverir *ad bona repetenda* ou il avera naturelement le *precipe quod reddat* de[12] detenue de chatel ou *replegiari* et noun pas cestuy bref qe prent issue par my damages. Jugement.

Malm.[13] Quei, si les chateux furent mortz ou alienez jeo serroy[14] donqe saunz recoverer ! (par quei il fut ousté par agarde).

Herle. Cestuy bref par statut est doné as successours après la mort lour predecessours vers qi chesqune manere d'accioun[15] atteynt a recoverir ; et vous dioms qe W. priour en qi temps etc. est en pleyne vie. Jugement de ceo bref.

Malm. Il est mort, qaunt a accioun user, pur ceo q'il est deposé et l'accioun quant a luy est esteynt, qe si[16] jeo portasse assise de drein presentement ' quis aduocatus etc. ultimam personam que mortua est,' tut soit il a la barre,[17] et il ne soit persone, le bref est assez bon, auxi par de cea. *Ad idem* jeo pose qe le baroun aliene le dreit sa femme et puys

[1] From *B* collated with *G* and *M*. [2] counterent *M*. [3] pristerent *G*, *M*. [4] agneaus *G*, aneles etc. *M*. [5] *For* du counte *subs.* en countant *M*. [6] *Om.* si *G*, *M*. [7] *For* par . . . outre, *subs.* par quei pur si petit enchesoun ne voloms pas abatre cesti bref *M*. [8] *Om.* proprement *M*. [9] *Ins.* fet *M*. [10] servy *G*, *M*. [11] *Ins.* en touz poyntz en tenps etc. *M*. [12] *Om.* de *M*. [13] *Om.* Malm. *M*. [14] *For* Quei . . . serroy *subs.* par quei de les chatels qe furent mortz ou aloignez ceo serreit *M*. [15] *Ins.* est *G*, *M*. [16] *Om.* si, *ins.* jeo pose qe *M*. [17] al bref *M*.

32. THE PRIOR OF LENTON *v.* SHALDEFORD.

Trespass founded on the penultimate chapter of the Statute[1] of Marlborough. A case of goods and chattels carried away from a prior. The writ was challenged on many points and it was awarded good.

The prior of Lenton brought his writ of trespass founded on the Statute of Marlborough against the parson of [Langore] etc. :—wherefore with force and arms the goods and chattels of the house and church of him the said prior to the value etc. to the grievous damage etc. and against our peace etc. And he counted that he took wool and lambs.

Herle. We ask judgment of this writ, for there is not a form of count for a live chattel and a dead chattel. And he has counted that they took and carried away lambs ; whereas he could have said in his writ ' wherefore he took and led away his beasts.'

Brabazon C.J.K.B. He has counted of wool and lambs which can just as well be carried away as driven away. Therefore answer further.

Herle. Still we ask judgment, for he speaks of ' goods and chattels of the house and church etc.,' whereas properly the property in the chattel rests not in the church but in the prior. We ask judgment.

Malberthorpe. Our writ is given us by statute and we have [followed] the statute. (And *Herle* was ousted.)

Passeley. Still we ask judgment of the form of this writ ; for the statute says that a man may have a recovery ' for demanding back his goods,' so that he will naturally have the *precipe quod reddat* of detinue of chattels or the *replegiari*, and not this writ, which has its issue in damages. We ask judgment.

Malberthorpe. What ! If the chattels were dead or alienated, I should then be without recovery ! (Thereupon *Herle* was ousted by award.)

Herle. This writ is given by statute for successors after the death of their predecessors, for whom every kind of action for recovery is extinct ; and we tell you that W. the prior in whose time etc. is alive. Judgment of this writ.

Malberthorpe. He is dead as regards using the action, for he has been deposed and as regards him the action is extinct ; for if I were to bring the assize of last presentation, ' what patron presented etc. the last parson who is dead,' even though the parson mentioned be at the bar, if he be not [in fact] the parson, the writ is good enough, so in this case. Similarly I put the case that the husband alienate the right of his wife, and is then outlawed, and the wife brings the *cui in*

[1] Stat. Marlb. c. 28.

soit utlagé et[1] la femme porte le *cui in uita*, tot soit il en vie pur ceo q'il est mort quant al siecle vous n'abaterez mye mon bref.

Roub. Si un homme porte bref vers un Abbé et seit deposé pendant le plee, le bref ne s'abatera mye, mès altre[2] la ou l'abbé porte le bref, etc., et ore est Willem deposé et chesqune manere d'accioun est esteynt,[3] par quei il covent qe cest homme soit respoundu. Et fut le bref agardé bon qaunt a ceo poynt etc.

Pass. Unqore demaundoms jugement de ceo bref, q'est un bref de trespas a force et armes fait a autre persone etc. ; ne statut ne doune mye q'il eit recoverir des damages mès *tantummodo ad bona repetenda.* Jugement de ceo bref.

Malm. Le bref se[4] lie assetz bon par ij resouns. L'une est pur ceo qe[5] le trespas fut fait en temps nostre predecessour de quel trespas accioun nous est doné par statut. Autre resoun est pur[6] la detenue fait en nostre temps.

Herle. Vostre bref ne se lie mye d'une detenue de chatele, eynz fait[7] d'un fait fait a force et as armes et a autre persone, ou le roy averoit le raunson du trespas fait en temps son predecessour.[8]

Malm. Jeo pose qe les biens soient mortz ou alloignez jeo ne pus pas recoverir mesme les biens, pur quei il covent qe mon recoverir chese[9] en damages, autrement serroi jeo saunz recoverir.

Herle. Vous recoverez la value etc.

West. La force de lour chalange est de ceo, qe homme ne recovera mye damages du trespas fait a autre persone. Jeo voi qe l'executour recoverunt damages du trespas fait a altre persone. Et d'altrepart si[10] waste soit fait en temps mon pere jeo averoy recoverir del waste et del trespas etc.

En dreit des executours fut dit qe les executours recoverent al oeps[11] lour testatour et noun pas a lour oeps demene. Et pur ceo veot le bref 'ad tardacionem executorum testamenti.' Al autre[12] en dreit del waste fut dit qe ceo ne fust pas de commune ley, eynz par statut[13] etc.

Roubery. Nous avoms regardé le bref, et nos compagnons sount assentuz qe le bref en chesqun point est assetz bon, qe vous avetz chalengé. Et pur ceo dites outre.

Pus disoint q'il ne fesoint riens encountre la pees, prest etc.

Et alii econtra.

[1] *Om.* et *M.* [2] *Ins.* est *G, M.* [3] atteynt *M.* [4] *Om.* se *G, M.* [5] *Om.* ceo qe *G, M.* [6] *Om.* pur *M.* [7] *Om.* fait *M.* [8] pere *M.* [9] chet *M.* [10] *For* Et . . . si, *subs.* auxi vey jeo d'autrepart qe si le *M.* [11] us *G.* *Om.* oeps *M.* [12] *Ins.* respouns *M.* [13] In the margin of *B* :—uidelicet statutum uocatum J. [*rectius* W] Botiller de wasto tempore alieno.

uita; although the man may be alive, you will not, because he is dead as regards the world, abate the writ.

Roubery J. If a man bring a writ against an abbot, and the abbot be deposed while the plea is pending, the writ will not abate,[1] but it is otherwise where the abbot brings the writ etc. Now William is deposed and every kind of action [by him] is extinct. Therefore this man must be answered. (And the writ was awarded good on this point etc.)

Passeley. Still we ask judgment of this writ, for it is a writ of trespass with force and arms done to another person etc.; and the statute does not provide that he recover damages, but provides only for the recovery of the goods. We ask judgment of this writ.

Malberthorpe. The writ lies sufficiently well for two reasons. One is, because the trespass was done in the time of our predecessor, and of such a trespass action is given us by the statute. The other reason is that the detinue was made in our time.

Herle. Your writ is not based on a detinue of chattels, but on a deed done 'with force and arms,' and to another person, where the king should have his fine for the trespass done in the time of the prior's predecessor.

Malberthorpe. Suppose that the goods were dead or eloigned, I could not recover the same goods; therefore it is necessary that my recovery lie in damages; for otherwise I should be without a recovery.

Herle. You would recover the value etc.

Westcote. The strength of their challenge is in this, that a man will not recover damages for a trespass done to another person. [But] I observe that executors will recover damages for a trespass done to another person. Moreover if waste were done in the time of my father, I should have a recovery for the waste and for the trespass etc.

As regards the executors, it was said that the executors recover for the use of their testator and not for their own use, and it is for this reason that the writ says 'in delay of the executors of the will. To the other reply with respect to waste it was said that this was not at common law, but by statute[2] etc.

Roubery J. We have considered the writ. Our fellow Justices are agreed that the writ, which you have challenged, is in every point good enough. Therefore answer further.

And then they said that they had done nothing against the peace, ready etc.

And the others to the contrary.

[1] The text seems to be faulty here. Probably the judge said that the writ would abate.

[2] Statutum de Uasto, 20 Edw. I.

The Record of the Case.

Coram Rege Rolls, 4 Edw. II., Trinity (No. 205), r. 42, Nottinghamshire.

Willelmus de Shaldeford capellanus, Hugo filius Willelmi le Prouost de Wyuerton, Ricardus Passauaunt, Iohannes Fillesone, Willelmus Husbonde, Rogerus de Herdeby, Willelmus Hamond, Willelmus Bonseriaunt, Simon Perre, Robertus Peire, Henricus Peire, Hugo Grys, Robertus de Herdeby, Nicholaus filius Galfridi, Robertus filius Alicie de Derby, Iohannes Boket, Iohannes filius Willelmi Dobbesone, Iohannes in the Wro et Iohannes Alicon in misericordia pro pluribus defaltis.

Idem Willelmus et omnes alii attachiati fuerunt ad respondendum priori de Lenton de placito quare ui et armis bona et catalla ipsius prioris ad ualenciam quadraginta solidorum apud Langar inuenta ceperunt et asportauerunt et alia enormia etc. ad graue dampnum etc. et contra pacem etc. Et unde queritur quod predictus Willelmus et omnes alii die Martis proxima ante festum sancti Marce ewangeliste anno regni regis nunc tercio ui et armis bona et catalla ipsius prioris uidelicet quadraginta agnos et lanam ad ualenciam quadraginta solidorum apud Langar inuenta ceperunt et asportauerunt unde dicit quod deterioratus est et dampnum habet ad ualenciam centum librarum. Et inde producit sectam etc.

Et predictus Willelmus et omnes alii ueniunt et defendunt uim et iniuriam quando etc. et omnes preter predictum Willelmum de Shaldeford capellanum dicunt quod in nullo sunt inde culpabiles. Et de hoc ponunt se super patriam etc. Et predictus Willelmus de Shaldeford capellanus dicit quod nichil contra pacem regis predicto priori fecit, dicit enim quod die et anno predictis fuit ipse capellanus parochialis ecclesie predicte uille de Langar et seruiens persone eiusdem ecclesie ita quod ipse cepit quosdam agnos et lanam decimatos et a nouem partibus separatos nomine domini sui predicti et non bona et catalla predicti prioris sicut idem prior superius queritur. Et de hoc ponit se super patriam etc.

Et predictus prior dicit quod predictus Willelmus et omnes alii de iniuria sua propria ui et armis et contra pacem etc. ceperunt bona et catalla sua predicta sicut superius queritur. Et hoc petit quod inquiratur per patriam Et predicti Willelmus et omnes alii similiter. Ideo ueniat inde iurata coram rege a die sancti Michaelis in tres septimanas ubicunque etc. ad recognoscendum etc. et qui nec etc. quia tam etc.

33. BOYDYN *v.* BRUN.[1]

Trespas ; ou l'avowere fut faite par raison de presentement.

Thomas de Boydon[2] porta son bref de trepas vers Willem de Ryvel[3] e plusours autres e conta qe W. e les autres vyndront atort

[1] From *D* collated with *P*. [2] William de Zernemouthe *P*. [3] Wauter de Ponesy, chaunceller du Sures *P*.

Translation of the Record.

For the reference, see opposite.

William of Shaldeford chaplain, Hugh the son of William le Provost of Wyverton, Richard Passavaunt, John Filleson, William Husbonde, Roger of Herdeby, William Hamond, William Bonserjaunt, Simon Perre, Robert Peire, Henry Peire, Hugh Grys, Robert of Herdeby, Nicholas the son of Geoffrey, Robert the son of Alice of Derby, John Boket, John the son of William Dobbesone, John in the Wro and John Alicon in mercy for several defaults.

The same William and all the others were attached to answer the prior of Lenton on a plea wherefore they took and carried away with force and arms the goods and chattels of him the said prior found at Langar to the value of forty shillings and other enormities etc. to the grievous damage etc. and against the peace etc. And whereupon he complains that the aforesaid William and all the others on the Tuesday [1] next before the feast of St. Mark the evangelist 3 Edw. II. took and carried away with force and arms the goods and chattels of him the same prior, to wit, forty lambs and wool to the value of forty shillings found at Langar. Whereupon he says that he is injured and has damage to the value of one hundred pounds; and thereof he brings suit etc.

And the aforesaid William and all the others come and deny tort and force when etc.; and all the others save the aforesaid William of Shaldeford chaplain say that they are in no way guilty thereof; and of this they put themselves upon the country etc. And the aforesaid William of Shaldeford chaplain says that he did nothing to the aforesaid prior against the king's peace, for he says that on the day and year aforesaid he was chaplain of the parish church of the aforesaid vill of Langar and servant of the parson of the same church so that he took certain lambs and wool tithed and separated from the nine parts in the name of his lord aforesaid and not the goods and chattels of the aforesaid prior as the same prior complains above. And of this he puts himself upon the country etc.

And the aforesaid prior says that the aforesaid William and all the others of their own tort with force and arms and against the peace etc. took his goods and chattels aforesaid as he complains above. And he seeks that this may be inquired by the country. And the aforesaid William and all the others likewise. Therefore let a jury thereon come before the king three weeks after Michaelmas, wheresoever etc. to make recognition etc. and who neither etc. because as well etc.

33. BOYDYN *v.* BRUN.[2]

Trespass. An avowry was made by reason of a presentment at a court leet.

Thomas Boydyn brought his writ of trespass against William Ryvel and many others, and counted that William and the others wrongfully

[1] 21 April 1310.

[2] The facts of the case as reported are not in accordance with the Record. Three of the defendants pleaded that they were not guilty of the trespass and the other ten joined issue with the plaintiff on the question whether the wall was on the soil of the plaintiff or on the king's highway. William Ryvel who was alleged by the plaintiff to have taken part in the trespass was not one of the defendants.

e fesoient abatre son mure, e[1] pierre taillé[2] empristront e emporteront en tiel lieu encontre la pees etc.

Roston. Touz ceux vous dient horpris Willem de rien copable etc. Willem Ryvel vous dist qe la ou vous[3] encontre la pees devoit[4] aver abatu un mure il vous dit qe le cont de Lanc' ad sa lete a Estreton'[5] deinz quel[6] lieu ou il se pleint y est ; issi qe la lete a tiel jour tenu[7] presenté fust par les dyseners qe cel mur fut levé en le roial chemyn par quei fut agardé par la court qe cel mure fut[8] abatu e issi venimes etc. ove autres de la lete com bien nous lust e abatimes etc.

Denum. Sire, vous veez bien coment il avowe cel abatement par raison de agarde de court, ou tele manere des choses chesont[9] en agarde ne put estre si non la ou il y ad partie somoné e attaché ; e issi[10] proces de court seit,[11] soit destreint. Et demandoms jugement si par[12] agarde puissetz abatement avower.

Ber. a *Roston.* Quant il y ad tiel presentement, le quel appent l'agarde, a la court ou al seneschal de la court ?

Roston. Sire, a tote la court ; e s'il voillent quant a cel demurrer en jugement, nous demurroms.

Scrop. Unqore jugement de ceste avowere[13] qe vous veitz[14] bien coment il avowent cest abatement par raison de un presentement e ne dist pas q'il fut un des presentours ne baillifs de la lete ne autre chose[15] qe lui done garantie de abatre, e de ceo demandoms jugement.

Rouston. Sire, nous sumes[16] com un des parceners[17] par comandement de baillif e issi avowoms.

Scrop. Nous pernoms a voz records q'il avowa en la manere come nous avoms chalengé. Jugement etc.

Ber. Ne affiez nent plus de grace de la court ; mès avisez vous de vostre plee, qar la court des hore en avant recordera la manere de voz respons etc.

Scrop. Nous vous dioms qe le mure est levé en le soil mesme cesti T., prest etc.

Rouston. En le roial chemyn, prest.

Ber. Ore, avetz wayvé vostre presentement.

Et stetit uerificacio.

[1] *Om.* e *P.* [2] taillé de piere *P.* [3] *Ins.* dites q'il *P.* [4] deveroit *P.* [5] Scottone *P.* [6] *Ins.* lete tel *P.* [7] *For* la . . . tenu, *subs.* al jour de la lete tenue scil. tel jour *P.* [8] serroit *P.* [9] ne chient point *P.* [10] *Ins.* par *P.* [11] *Om.* seit *P.* [12] *Ins.* resoun de *P.* [13] avowement *P.* [14] vuetz *D.* [15] *Ins.* moustre *P.* [16] venimes *P.* [17] *sic D* (*an error for* presentours), *subs.* desiners *P.*

came and caused his wall to be pulled down, and they seized and carried the cut stone away to a certain place against the peace etc.

Roston. All these men, except William, tell you that they are not guilty etc.; and William Ryvel says that whereas you [say that he] against the peace broke down a wall, he says that the Earl of Lancaster has his leet at [Brinklow] within which [leet] the place about which he brings his plaint lies; and so that at the leet held on such a day it was presented by the tithingmen that this wall was erected in the royal highway; and thereupon it was awarded by the court that this wall should be pulled down; and so we came etc. with others of the leet, as well we might, and we pulled it down etc.

Denham. Sir, you see well how he avows this pulling down by reason of an award of the court. This kind of matter [does not] lie in award; nor can it be [in award] save where a party has been summoned and attached; and so by the process of the court there may be distraint. We ask judgment whether by reason of an award you can avow the pulling down.

Bereford C.J. to *Roston.* When such a presentment is made is it to the court or the steward of the court that the award belongs?

Roston. Sir, to the whole court; and if they wish to remain in judgment as to this, we will remain.

Scrope. Still we ask judgment of this avowry, for you see how they avow this pulling down, by reason of a presentment, and they do not say that William was one of the presenters nor one of the bailiffs of the leet, nor anything else which gives him authority for pulling it down. Of this we ask judgment.

Roston. Sir, we came as one of the presenters,[1] [and pulled it down] by command of the bailiff; and in that way we avow.

Scrope. We betake ourselves to your records[2]; for he avowed in the way which we have challenged. We ask judgment etc.

Bereford C.J. Trust no more to the favour of the court; but be advised about your plea; for the court from now will record how you reply etc.

Scrope. We tell you that the wall was erected on the soil of this same Thomas. Ready etc.

Roston. In the king's highway. Ready etc.

Bereford C.J. Now, you have waived your presentment.

The averment stood.

[1] Or perhaps as one of the tithingmen as in *P.* See note 17 opposite.

[2] That is to the record of the Common Bench.

The Record of the Case.

De Banco Rolls, 4 Edw. II., Trinity (No. 187), r. 98d., Warwickshire.

Iohannes Brun de Stretton, Henricus Pylet, Ranulphus Pylet, Nicholaus Neweman, Gilebertus Wyot, Galfridus Herbert, Willelmus Maydessone, Ricardus Hoppere, Thomas Hyche, Walterus de Allespath, Simon atte Welle, Adam in the Hurne et Robertus de Swyneford in misericordia pro pluribus defaltis etc.

Idem Iohannes et alii attachiati fuerunt ad respondendum Thome Boydyn de placito quare ipsi simul cum Willelmo Ryuel de Fenny Neubold ui et armis quemdam murum lapideum ipsius Thome Boydyn apud Stretton iuxta Kyrkeby et lapides inde sculptas in minimas partes fregerunt et alia enormia ei intulerunt ad dampnum ipsius Thome Boydyn decem librarum et contra pacem etc. Et unde idem Thomas Boydyn queritur quod predicti Iohannes et alii simul etc. die Martis proxima post festum sancti Dunstani anno domini regis nunc tercio fecerunt ei predictam transgressionem contra pacem etc. Vnde dicit quod deterioratus est et dampnum habet ad ualenciam decem librarum. Et inde producit sectam etc.

Et Iohannes et alii per attornatum suum ueniunt et defendunt uim et iniuriam quando etc. Et predicti Nicholaus et alii preter predictos Iohannem Henricum et Ranulphum dicunt quod comes Lancastrie habet libertatem uisus franci plegii in manerio suo de Brynkelowe in comitatu predicto etc. ita quod ad uisum ibidem tentum predictis die et anno presentatum fuit per decennarios et alios presentatores uisus etc. quod idem Thomas leuauerat predictum murum in regia strata faciendo purpresturam etc. per quod consideratum fuit etc. quod illa purprestura amoueretur etc. et murus predictus prosterneretur etc. per quod iidem Iohannes Brun et alii una cum decenariis et presentatoribus etc. recenter eodem die predictum murum prostrauerunt etc. absque aliqua transgressione facienda contra pacem in hoc casu etc.

Et Thomas dicit quod predicti Iohannes et alii transgressionem suam predictam itaque excusare non possunt etc. quia dicunt quod predictus murus leuatus fuit extra omnem regiam stratam in solo ipsius Thome proprio etc. Et quod ita sit petit quod ueritas inde inquiratur per patriam. Et Nicholaus et alii similiter etc.

Et predicti Iohannes Henricus et Ranulphus bene defendunt quod ipsi nuncquam fecerunt ei transgressionem predictam etc. Et de hoc ponunt se super patriam. Et Thomas similiter.

Ideo preceptum est uicecomiti quod uenire faciat hic in crastino sancti Martini xij etc. per quos etc. et qui nec etc. ad recognoscendum in forma predicta etc. quia tam etc.

Postea in crastino Purificacionis beate Marie anno regis nunc sexto uenerunt predictus Thomas et Iohannes et alii per attornatos suos uenerunt et similiter iuratores de consensu parcium electi qui dicunt super sacramentum suum quod predicti Iohannes et alii ui et armis die

Translation of the Record.

For the reference, see opposite.

John Brun of Stretton, Henry Pylet, Ranulph Pylet, Nicholas Neweman, Gilbert Wyot, Geoffrey Herbert, William Maydessone, Richard Hoppere, Thomas Hyche, Walter of Allespath, Simon atte Welle, Adam in the Hurne and Robert of Swyneford in mercy for several defaults etc.

The same John and the others were attached to answer Thomas Boydyn on a plea wherefore they together with William Ryvel of Fenny Newbold with force and arms broke down the stone wall of him the said Thomas Boydyn at Stretton-next-Kirby [1] and the hewn stones thereof broke into small fragments and other enormities did to him to the damage of him the said Thomas Boydyn of ten pounds, and against the peace etc. And whereupon the same Thomas Boydyn complains that the aforesaid John and the others together with etc. on the Tuesday [2] next after the feast of St. Dunstan in the third year of our lord king who now is did to him the aforesaid trespass against the peace etc. Whereupon he says that he is injured and has damage to the value of ten pounds. And thereof he brings suit etc.

And John and the others come by their attorney and deny tort and force when etc. And the aforesaid Nicholas and the others except the aforesaid John Henry and Ranulph say that the earl of Lancaster has the liberty of view of frankpledge in his manor of Brinklow in the county aforesaid etc. so that at the view held there on the aforesaid day and year it was presented by the tithing men and other presenters of the view etc. that the same Thomas had raised the aforesaid wall in the royal highway so making a purpresture etc. whereupon it was awarded etc. that that purpresture be removed etc. and the wall aforesaid pulled down etc. and accordingly the same John Brun and the others together with the tithing men and presenters etc. forthwith on the same day pulled down the aforesaid wall etc. without committing any trespass against the peace in this case etc.

And Thomas says that the aforesaid John and the others cannot thus excuse the aforesaid trespass etc. for they say that the aforesaid wall was raised wholly outside the royal highway on the own soil of him the said Thomas etc. And that so it is he prays that the truth thereof may be inquired by the country. And Nicholas and the others likewise etc.

And the aforesaid John Henry and Ranulph well deny that they ever committed against him the aforesaid trespass etc. and of this they put themselves on the country. And Thomas likewise.

Therefore the sheriff is ordered to cause to come here on the morrow of St. Martin twelve etc. by whom etc. and who neither etc. to make recognition in the form aforesaid etc. because as well etc.

Afterwards on the morrow [3] of the Purification of the Blessed Mary in the sixth year of the king who now is, the aforesaid Thomas and John and the others came by their attorneys, and likewise the jurors chosen by consent of the parties, who say upon their oath that the aforesaid John and

[1] This is Stretton-under-Fosse next Monks Kirby.

[2] 26 May 1310.

[3] 3 February 131$\frac{2}{3}$.

The Record of the Case—*continued.*

et anno supradictis prostrauerunt predictum murum leuatum in solo ipsius Thome contra pacem regis ad dampnum ipsius Thomè decem librarum. Ideo consideratum est quod predictus Thomas recuperet uersus eos dampna sua predicta et Iohannes et alii capiantur etc.

Postea a die sancte Trinitatis in xv dies anno regni domini regis nunc sexto uenerunt predicti Iohannes Brun, Henricus Pylet, Ranulphus Pylet, Nicholaus Newman, Gilebertus Wyot, Galfridus Herbert, Willelmus Maydessone, Ricardus Hoppere, Adam in the Hurne, Robertus de Swyneford, et similiter predictus Thomas Boydyn uenit et cognouit quod predicti Iohannes et alii satisfecerunt ei de predictis dampnis etc. Et predictus Iohannes Brun fecit finem cum domino rege de transgressione predicta de dimidia marca per plegium Thome Boydyn, et predictus Henricus Pylet de dimidia marca per plegium Iohannis Brun et predictus Ranulphus de quadraginta denariis per plegium predicti Henrici, et quilibet predictorum Nicholai Neweman, Gileberti, Galfridi, Willelmi, Ricardi, Ade et Roberti de uiginti denariis per plegium Roberti Ryuel et Ricardi de Napton de comitatu predicto.

34. WALEYS *v.* WALTON.[1]

De utrum ou le predecessour aliena et le patron et l'ordinarie confermerent avant temps de memore etc.

Une persone porta son bref de *utrum* et dit qe son predecessour fut seisi en temps le roi H. et aliena.

Herle. Nous vous dioms q'un M. vostre predecessour en temps le roy H. pere le roy Richard[2] aliena ceux tenementz par ceo fait. Et pus R. de C. qe fut patron graunta et conferma mesme le doun par ceo fait; et l'ordinarie[3] cele alienacioun[4] conferma par ceo fait. Jugement si a la jurée devez estre resceu.

Rost. Sire, a ceo vous dioms qe cely q'il dit aver esté[5] patron n'avoit unqes rien en la patronage. Jugement si par son fait nous puissez barrer, et prioms la jurée.

Herle. Ore demaundoms jugement, desicom vous avetz pris vostre title del alienacioun vostre predecessour en temps le roy H. ael etc. et avez conu l'alienacioun estre fait en temps le roy H. le veil[6] si la jurée deyve estre a ceste demoustrance.

Roston. C'est nostre bref de dreit.

[1] From *B* collated with *G* and *M*. There is also a report of this case in *R*, but little of it is legible save the last two speeches. [2] *sic G*, *R*, etc. *B*, *M*. *Ins.* fut seisi et *M*. [3] *Ins.* testmoigna *M*. [4] *Ins.* et *M*. [5] *Om.* aver esté, *ins.* qu'il fut *M*. [6] *Om.* le veil, *ins.* piere le roi Richard *R*.

Translation of the Record—*continued.*

the others by force and arms on the day and year aforesaid pulled down the aforesaid wall raised on the soil of him the said Thomas against the king's peace to the damage of him the said Thomas of ten pounds. Therefore it is awarded that the aforesaid Thomas recover against them his damages aforesaid, and that John and the others be taken etc.

Afterwards on the quindene[1] of the Holy Trinity in the sixth year of the reign of the lord king who now is came the aforesaid John Brun, Henry Pylet, Ranulph Pylet, Nicholas Newman, Gilbert Wyot, Geoffrey Herbert, William Maydessone, Richard Hoppere, Adam in the Hurne, Robert of Swyneford, and likewise came the aforesaid Thomas Boydyn and he acknowledged that the aforesaid John and the others had satisfied him concerning the aforesaid damages etc. And the aforesaid John Brun made fine with the lord king concerning the trespass aforesaid with half a mark by the pledge of Thomas Boydyn, and the aforesaid Henry Pylet with half a mark by the pledge of John Brun, and the aforesaid Ranulph with forty pence by the pledge of the aforesaid Henry, and each of the aforesaid Nicholas Neweman, Gilbert, Geoffrey, William, Richard, Adam and Robert with twenty pence by the pledge of Robert Ryvel and Richard of Napton of the county aforesaid.

34. WALEYS *v.* WALTON.

Utrum. The predecessor alienated and the patron and the ordinary confirmed before the time of legal memory.

A parson brought his writ of *utrum* and said that his predecessor was seised in the time of king Henry [III][2] and alienated.

Herle. We tell you that one Mathew your predecessor in the time of king Henry the father of king Richard[3] alienated these tenements by this deed. And afterwards Ralph of C. who was the patron granted and confirmed the same gift by this deed; and the ordinary confirmed this alienation by this deed. We ask judgment whether you ought to be received to have this jury.

Roston. Sir, to this we tell you that he that he says was patron never had anything in the patronage. We ask judgment whether you can bar us by his deed; and we ask for the jury.

Herle. Now inasmuch as you have taken your title from the alienation of your predecessor in the time of king Henry III the grandfather etc. and have acknowledged that the alienation was made in the time of king Henry [the father of king Richard], we ask judgment whether there should be a jury on this demonstrance.

Roston. This is our writ of right.

[1] 24 June 1313.

[2] It appears from the Record that in the writ the alienation was alleged to have been made in the reign of Henry III.

[3] See footnote 2 opposite.

Ber. Si vous luy oustassez de cestuy bref, quel bref avera il ?

Herle. Sire, il averont autre bref et autre demoustrance.[1]

Ber. Jeo pose qe son predecessour de qi il ad counté n'out mye aliené ne son predecessour avant lui, unqore demurt la jurée, si ceo soit franc tenement ou almoigne etc.

Herle. Sire, vous avez bien entendu coment nous avoms mys avant ceux fetz pur eux barrer, les queux proevent en eux meismes qe cestuy Rauf de qi il parlent[2] en[3] fut patron et[4] avowé de celuy eglise et depuys q'il ount conu l'alienacioun avant le temps de memore fait par la persone et confermement l'ordinarie et par ceste alienacioun les tenementz contenuz[5] d'auncestre en auncestre devant le temps de memore tanqe[6] a ore, d'enquere[7] si cestuy Rauf avoit riens en l'avoweson ou noun, qe fut avant le temps de memore et noun pas pus, ceo serroit diverse chose, a ceo qe moy semble.

The Record of the Case.

De Banco Rolls, 4 Edw. II., Trinity (No. 187), r. 163, Derbyshire.

Iurata uenit recognitura utrum unum messuagium et una uirgata terre cum pertinenciis in Walton super Trentam sint libera elemosina pertinens ad ecclesiam de Walton super Trentam unde Ricardus Waleys est persona an laicum feodum Rogeri filii Roberti filii Ade de Walton super Trentam etc. Et unde idem Ricardus per attornatum suum dicit quod quidam Matheus de Walton quondam persona ecclesie predicte predecessor etc. fuit seisitus de predictis tenementis cum pertinenciis ut de feodo et iure ecclesie predicte tempore pacis tempore regis Henrici aui domini regis nunc qui eodem tempore predicta tenementa alienauit etc.

Et Rogerus uenit, et quo ad predictum messuagium etc. nichil dicit quare iurata remaneat etc. nisi tantum quod messuagium illud non est libera elemosina etc. pertinens ad ecclesiam predictam immo laicum feodum ipsius Rogeri etc. Et de hoc ponit se super iuratam etc. Et predictus Ricardus similiter. Ideo quo ad hoc capiatur iurata etc. et quo ad predictam uirgatam terre etc. dicit quod iurata inde procedere non debet etc. Dicit enim quod predictus Matheus quondam persona ecclesie predicte predecessor etc. non fuit seisitus de predicta terra tempore predicti Henrici regis aui etc. sicut predictus Ricardus narrat etc. Immo dicit re uera quod idem Matheus seisitus fuit de illa uirgata terre etc. ut persona ecclesie predicte tempore regis Henrici patris domini regis Ricardi consanguinei domini regis nunc qui predictam terram ex consensu et concessione cuiusdam Radulfi dapiferi patroni etc. dedit cuidam Geruasio nepoti Roberti Malluuel antecessori

[1] *Om. Ber.* si . . . demoustrance *R.* [2] pernent lour title *M.* [3] *Om.* en *G, M, R.* [4] *Om.* et *R.* [5] continuez *R.* [6] jesqes *M.* [7] *Ins.* donques *R.*

Bereford C.J. If you were to oust him from this writ, what writ would he have?

Herle. Sir, he would have another writ and another demonstrance.

Bereford C.J. Suppose that his predecessor of whom he has counted had not alienated nor the predecessor before him, the jury would still remain, to say whether this were frank tenement or frank almoign etc.

Herle. Sir, you have well heard how we have put forward these deeds to bar them. These deeds prove of themselves that this Ralph of whom they speak was patron and advocate of this church, and since they have acknowledged the alienation by the parson made before the time of legal memory, and the confirmation of the ordinary, and since the tenements continued by this alienation from ancestor to ancestor [of the tenant] from before the time of legal memory till now, it would, as it seems to me, be a very different matter to inquire whether this Ralph, who [alienated] before the time of legal memory and not afterwards, had anything in the advowson or not.

Translation of the Record.

For the reference, see opposite.

A jury comes to make recognition whether one messuage and one virgate of land with the appurtenances in Walton-upon-Trent are frank almoign belonging to the church of Walton-upon-Trent whereof Richard Waleys is the parson or the lay fee of Roger the son of Robert the son of Adam of Walton-upon-Trent etc. And whereupon the same Richard by his attorney says that a certain Mathew of Walton, sometime parson of the church aforesaid predecessor etc. was seised of the aforesaid tenements with the appurtenances as of fee and as of the right of the church aforesaid in time of peace in the time of king Henry the grandfather of the lord king who now is, and this Mathew at that same time alienated the aforesaid tenements etc.

And Roger comes and as regards the aforesaid messuage etc. he says nothing for which the jury should wait etc. save only that that messuage is not frank almoign etc. belonging to the church aforesaid, but the lay fee of him the said Roger etc. And of this he puts himself upon the jury etc.; and the aforesaid Richard likewise. Therefore as regards this let the jury be taken etc. And as regards the aforesaid virgate of land etc. he says that the jury ought not to proceed thereon etc.; for he says that the aforesaid Mathew, sometime parson of the church aforesaid, predecessor etc. was not seised of the aforesaid land in the time of the aforesaid Henry the king, grandfather etc., as the aforesaid Richard counts etc.; but he says that in fact the same Mathew was seised of that virgate of land etc. as parson of the church aforesaid in the time of king Henry the father of the lord king Richard kinsman of the lord king who now is, and this Mathew with the consent and by the grant of one Ralph the Steward the patron etc. gave the aforesaid land to one Gervase nephew of Robert Malluvel the ancestor of the aforesaid Roger,

The Record of the Case—*continued.*

predicti Rogeri cuius heres ipse est habendam et tenendam sibi et heredibus suis etc. Et profert cartam ipsius Mathei persone ecclesie sancti Laurencei de Walton' que hoc testatur etc. Profert eciam cartam predicti Radulfi patroni etc. que predicta donum consensum et concessionem etc. plenius testatur etc. et eciam quasdam literas cuiusdam Ricardi tunc Couentrensis et Lichfeldensis episcopi loci diocesani etc. que predicta donum ipsius Mathei et assensum et concessionem predicti patroni confirmauerunt[1] et corroborauerunt[2] etc. Et petit iudicium etc.

Et Ricardus dicit quod per factum predicti Radulfi patroni ecclesie sue predicte preiudicari non debet etc. Dicit enim quod quidam Robertus Blake styward aliquo tempore fuit seisitus de aduocacione ecclesie predicte tanquam uerus patronus etc. et de ipso Roberto descendit ius patronatus etc. cuidam Roberto ut filio et heredi fratri predicti Radulfi antenato etc. et de ipso Roberto filio etc. descendit ius etc. cuidam Rogero ut filio et heredi etc. Et de ipso Rogero cuidam Rogero ut filio et heredi etc. et sic descendendo linealiter etc. usque Robertum de Monte alto nunc patronum etc. Unde dicit quod predictus Radulfus per cuius factum predictus Rogerus nititur ipsum Ricardum nunc personam etc. ab accione precludere nuncquam fuit patronus ecclesie predicte nec aliquid iuris habuit in patronatu eiusdem etc. Et hoc petit quod inquiratur per iuratam etc. Et Rogerus similiter etc. Ideo capiatur iurata etc. set ponitur in respectum usque a die sancti Martini in quindecim dies pro defectu iuratorum, quia nullus uenit. Ideo uicecomes habeat corpora etc.

35. THE BISHOP OF EXETER *v.* TAILLUR.

I.[3]

Garde, ou le pere l'enfaunt avoit aliené par collusion solom statutum de Marleberge.

L'evesqe d'Excestre porta son bref de garde devers R. le Taillour et M. sa femme etc.

Malm. Sire, nous clamoms franc tenement en ceux tenementz. Jugement si a cesti bref de garde de nostre franc tenement devoms respoundre.

Scrop. Coment clamez vous franc tenement ?

Malm. J. d'Arundel fut seisi de mesme ceux tenementz, qe hors de sa seisine dona[4] a mesme cestuy R. et M. etc. et a les heirs de lour ij corps etc. et issi nostre franc tenement. Jugement.

[1] MS. confirmauit. [2] MS. corroborauit. [3] From *B* collated with *G*, *M*, and *R*. [4] *Ins.* ceux tenementz *M*.

Translation of the Record—*continued.*

whose heir he is, to have and to hold to him and his heirs etc. And he proffers the charter of him the said Mathew parson of the church of St. Lawrence of Walton, which witnesses this etc. He proffers also the charter of the aforesaid Ralph the patron etc. which more fully witnesses etc. the aforesaid gift consent and grant etc., and also certain letters of one Richard,[1] then bishop of Coventry and Lichfield, diocesan of the place etc. which confirmed and corroborated etc. the aforesaid gift by him the said Mathew and the consent and grant of the aforesaid patron. And he asks judgment etc.

And Richard says that by the deed of the aforesaid Ralph patron of his church aforesaid he ought not to be prejudiced etc.; for he says that one Robert Blak steward sometime was seised of the advowson of the church aforesaid as the true patron etc. and from him the said Robert descended the right of the patronage etc. to one Robert as son and heir the elder born brother of the aforesaid Ralph etc.; and from him the said Robert the son etc. descended the right etc. to one Roger as son and heir etc.; and from him the said Roger to one Roger as son and heir etc. and so descending lineally etc. to Robert of Mold now the patron etc. Whereupon he says that the aforesaid Ralph by whose deed the aforesaid Roger strives to preclude him the said Richard now the parson etc. from his action never was patron of the church aforesaid, nor had any right in the patronage of the same etc. And he asks that this may be inquired by the jury etc. And Roger likewise etc. Therefore let the jury be taken etc.: but it is put in respite until the quindene of St. Martin for want of jurors, because no jurors came. Therefore let the sheriff have the bodies etc.

35. THE BISHOP OF EXETER *v.* TAILLUR.[2]

I.

A writ of wardship, where the father of the infant had alienated by collusion according to the Statute[3] of Marlborough.

The bishop of Exeter brought his writ of wardship[4] against Roger le Taillour and Melior his wife etc.

Malberthorpe. Sir, we claim frank tenement in these tenements. We ask judgment whether on this writ of wardship we ought to answer concerning our frank tenement.

Scrope. How do you claim frank tenement?

Malberthorpe. John of Arundel was seised of these same tenements, and out of his seisin he gave them to this same Roger and Melior etc. and to the heirs of their two bodies etc., and so they are our frank tenement. We ask judgment.

[1] This is Richard Peche, bishop of Coventry and Lichfield from 1161 to 1182.

[2] This is *Fitz.* Book ii. fol. 29 v°, Garde, No. 119.

[3] Statute of Marlborough, c. 6.

[4] The bishop also brought proceedings in the Common Bench against Sir Thomas Lercedeakne on the wardship of the body of this John the son of John of Arundel (*see* F. C. Hingeston-Randolph, *Register of Walter de Stapeldon*, p. 33).

Pass. Sire, nous vous dioms qe R. et M.[1] tenent ceux tenementz du lees l'avantdit J. a terme des anz rendant par an etc.[2] et après le terme passé feisant plus qe la value de la terre, issynt tenent il par feffement feynt et [3] en collusioun solom [4] statut de Marleberge pur luy faire ensure de son terme et nous perdre la garde. Jugement s'il ne deyvent respoundre.

Malm. Sire, nous vous dioms qe nous tenoms en fee taillé a nous etc. *ut supra* [5] del doun J. de Arundel etc.

Pass.[6] Quei avetz vous de ceo ?

Scot.[7] Prest etc.

Pass.[6] Nous avoms dit qe c'est un feffement feynt *ut supra*, et l'estatut veot q'il soit enquys ' per testes nominatos in carta.' Et nous allegeoms collusion etc. ne il ne mette nule chose avant qe proeve son dit etc. dount [8] par les testmoignes de la chartre auxi com l'estatut veot covent [9] estre enquys et *per consequens* a nul averement [10] saunz moustrer chartre ne doit il avenir.

Malm. Veetz yci le fait qe le tesmoigne en la forme avantdit.

Et fut la chartre tiel qe J. dona les tenementz a R. et M. etc. et a les heirs etc. *ut supra* a aver et tener etc. feisant a J. une rose par an etc. tanqe al fyn du terme de viij anz et après les viij anz feisant par an xl [11] livres etc.

Pass. Ore demaundoms jugement desicom la chartre tesmoigne expressement qe c'est un [12] feynt feffement etc. et l'estatut veot qe nous ne serroms [13] pas ousté de la garde par tiel manere de feffement eynz qe nous recoveroms par la ou nous sumes par voie d'accioun, qar ne list [14] pas a nous d'entrer, qe l'estatut nel [15] doune poynt, eynz qe nous [16] nous purchaceoms par voie de ley.

Hervi. Coment qe la chartre parle d'un certein terme rendaunt etc. et après le terme fesant etc. nous enquerroms [17] de la collusion.

Mal. qe J. de Arundel nous enfeffa de meisme les tenementz en bone foy et nent [18] en collusioun solom [19] statut etc. prest etc.

Scrop. q'il vous fit un feynte feffement et [20] en collusion solom statut etc.[21] pur luy ensurer de terme et pur nous faire perdre la garde prest etc.

Et sic ad patriam.

[1] *Ins.* sa femme *M.* [2] un certeyn *M.* [3] *Om.* feynt et, *Ins.* fet *M.* [4] de *M.* [5] *Om.* a . . . supra *M.* [6] *Scrop. M.* [7] *Scot. B, G, Malb. M.* [8] *For* proeve . . . dount *subs.* put son dit tesmoigner *M.* [9] qe put *M.* [10] *Ins.* lui est doné par statut. Jugement si a nul averement *M.* [11] x *M.* [12] ceo fut *M.* [13] seoms *M.* [14] lirra *M.* [15] ne ley *M*, ne le *R.* [16] *Om.* nous *M*, *R.* [17] *For* fesant . . . enquerroms *subs.* rendaunt x livres par an ou meyns et pur ceo nous voloms enquerrer *M.* [18] *Ins.* en feynt feffement ne *M.* [19] de le *M.* [20] *Om.* et *R.* [21] *For* Scrop . . . statut etc. *subs.* qe ceo feffement est feynt et en collusioun del estatut *M.*

Passeley. Sir, we tell you that Roger and Melior hold these tenements of the lease of the aforesaid John for a term of years, rendering [therefor a rose] a year etc., and after the term has passed paying more than the value of the land, so that they hold by feigned feoffment and in collusion, according to the Statute of Marlborough, to make them sure of their term, and to make us lose the wardship. We ask judgment whether they ought not to answer.

Malberthorpe. Sir, we tell you that we hold in fee tail to us etc. (as above) of the gift of John of Arundel etc.

Passeley. What have you of this ?

Malberthorpe.[1] Ready etc.

Passeley. We have said that this is a feigned feoffment (as above) ; and the statute says let it be inquired ' by the witnesses named in the charter.' We allege collusion etc., and he puts forward nothing which proves his statement etc. Therefore as the statute provides it must be inquired by the witnesses of the charter ; and consequently he ought not to arrive at any averment without showing a charter.

Malberthorpe. See here the deed which witnesses this in the form aforesaid.

The charter was to the effect that John gave the tenements to Roger and Melior etc., and to the heirs etc. (as above) to have and to hold etc. paying therefor to John a rose a year etc. until the end of a term of eight years, and after the eight years paying [ten] pounds a year etc.

Passeley. Now we ask judgment, inasmuch as the charter witnesses by its very words that this is a feigned feoffment etc., and the statute says that we should not be ousted from the wardship by a feoffment of this kind but that we should recover in the case in which we are, by way of action. Nor is it lawful for us to enter, for the statute does not give us that remedy, but says that we may purchase for ourselves by way of law.

Stanton J. Although the charter speaks of a certain term, rendering etc. and after the term paying etc. we will inquire about the collusion.

Malberthorpe. John of Arundel enfeoffed us of the same tenements in good faith and not in collusion, according to the statute etc. Ready etc.

Scrop. He made you a feigned feoffment and in collusion according to the statute etc. to ensure to [you] the term, and to make us lose the wardship. Ready etc.

And so to the country.

[1] See Note 7 opposite.

II.[1]

Bref de garde porté [sur un] feffement fait en fraude solom statut de Marleberge, ou la partie allegga qe le feffement fut fait outre la value et par colour etc. L'autre dit qe nent outre la value et fut chacé a respondre s'il fut fait *partibus cons*[*entientibus*] etc.

L'evesqe de Excestre porta bref de garde vers Roger le Taillour e Meliore [2] sa femme, e demanda la garde de certeinz tenemenz e dit qe Johan de Arundel tent de Thomas jadis evesqe de Excestre son predecessour par hommage e escuage e murust en son hommage e issi appent a lui la garde.

Malm. Nous vous dioms qe ceux tenemenz de qi vous demandez la garde est franc tenement, e demandoms jugement si a cesti bref de garde devoms respondre.

Herle. Il sont feffez en fraude a nous toller la garde.

Ber. Coment qe vous clamez franc tenement ceo ne tout nent qe vous ne responez au bref de garde en son cas.

Herle. Sire, nous vous dioms qe Johan de Arundel lessa ceux tenemenz a Roger et Meliore sa femme a terme des aunz denz quel terme il lour fist un feffement feynt a nous tollir la garde. Et demandoms jugement si par tiel feffement feynt encontre forme de statute puissetz nous de ceste garde ouster.

Malm. ut prius.

Herle. Il sount feffez de [3] ceux meeses et iij[4] acres de terre Cornwailleis outre terme fessant la value de la terre et plus [5]; issint sont il feffez par fraude.

Mal. Si vous volez ceo dire nous le voloms averrer qe non pas a la value de la terre etc.

Ber. Vous avez ley taillé en certeyn, et [6] en cele matere, q'il vous dit qe vous avez fayt un feffement faynt, par quei il covent qe vous responetz.

Mal. Sire, vous nous dioms qe Johan de Arundel nous enfeffa de mesme ceux tenemenz a Roger et a A. et a les heirs de lour deux corps engendrez.

Herle. Quei avetz de ceo ?

Malm. Prest etc.

Pass. A ceo n'avendrez mye, qar l'estatut de Marleberge dit qe vous estes entré par cele manere de feffement [7] enquere la fraude par tesmoignes nomez en la chartre, par quei par statut vous avetz mester de mostrer feffement.

[1] From *D* collated with *P.* [2] Elianore *P.* [3] *Om.* de, *Ins.* a tenir *P.* [4] *Om.* iij. *D.* [5] pus *D.* [6] *Om.* et *P.* [7] *Ins.* fet *P.*

II.

A writ of wardship upon a feoffment made fraudulently according to the Statute of Marlborough. The plaintiff alleged that the feoffment was made for a rent beyond the value of the land and colourably etc. The other said that it was not beyond the value, and he was driven to answer whether it was made . . .[1]

The bishop of Exeter brought a writ of wardship against Roger le Taillour and Melior his wife, and demanded the wardship of certain tenements and he said that John of Arundel held of Thomas lately bishop of Exeter his predecessor by homage and scutage, and died in the bishop's homage, and so the wardship belongs to him.

Malberthorpe. We tell you that these tenements of which you demand the wardship are frank tenement; and we ask judgment whether we ought to reply to this writ of wardship.

Herle. They are enfeoffed fraudulently to deprive us of our ward.

Bereford C.J. Although you claim frank tenement, that does not prevent your answering a writ of wardship in his case.

Herle. Sir, we tell you that John of Arundel leased these tenements to Roger and Melior his wife for a term of years, within which term he made a feigned feoffment to deprive us of the wardship. And we ask judgment whether by such a feigned feoffment against the form of the statute you can oust us from this wardship.

Malberthorpe (as before).

Herle. They are enfeoffed of these messuages and four Cornish acres of land, paying therefor after the term the value of the land and more; so they are enfeoffed fraudulently.

Malberthorpe. If you will say so, we will aver that the rent was not to the value of the land etc.

Bereford C.J. You have a law in precise words in this matter. He tells you that you have made a false feoffment; therefore you must answer.

Malberthorpe. Sir, we tell you that John of Arundel enfeoffed us of these same tenements to hold to Roger and [Melior] and the heirs of their two bodies begotten.

Herle. What have you of this?

Malberthorpe. Ready [are we to aver it].

Passeley. You will not arrive at that, for the Statute of Marlborough says that [if] you have entered by this kind of feoffment the fraud must be inquired by the witnesses named in the charter. Therefore by the statute you must show the feoffment.

[1] The reading is doubtful here.

Malm. mist avant la chartre Johan qe voleit q'il avoit doné les tenemenz a Roger et a M. sa femme en forme [1] taillé fessant a lui a terme de viij aunz une rose e après les viij aunz xl [2] livres par an.

Herle. Ore piert bien qe ceo feffement est faite en fraude.

[*Malm.* Ceo n'est pas en fraude] [3] qar iij acres de terre [4] Cornwailleis amontent a [5] com treis carués de ceo pays, par quei ceo n'est pas collusioun, qe iij carués de terre vaillent plus par an qe x livres.

Ber. Il n'ad autre mès [6] enquere del fraude solom statut etc.

III. [7]

Garde ou les tenauntz allegeront q'il furent tenauntz dil fraunc tenement, et pus moustrerent coment par feffement; ou fut dit qe ceo fut fet par colusioun.

Wauter evesqe de Excestre porta son bref de garde ver Roger le Taillour de L. e Meliore sa femme e demanda la garde de un mese e de une carué de terre ove les appurtenances etc. e dit qe la garde a ly append pur ceo [8] qe Jon Aroundel les avantdyz mees e terre [9] tynt de Thomas evesqe de Excestre son predecessour par service de chivaler etc.

Malm. Sire, Roger e Meliore vous dient qe les tenemenz en le bref contenuz si est [10] lour fraunke tenement e demandoms jugement si de lour fraunke tenement a nul bref de garde devont respondre. [11]

Hervi. Vous dites trop poy, si vous ne [12] diez coment lour fraunke tenement.

Frisk. Il ne put estre partie a trier nostre fraunke tenement. Il [13] ne demandont qe garde qe n'est qe chatel, mès si [14] le heir Jon Aroundel se voudra purchacer, a lui dyrrioms assez coment nous sumes avenuz.

Herle. Jon de Aroundel lessa ceux tenemenz a Roger e a Meliore sa femme a terme des aunz e a [15] surté de lour terme, lor fit un feffement feint *uidelicet* fesant a Jon de Aroundel e a ses heirs plus des services qe la terre ne vaut. E demaundoms jugement si par [16] tiel feint feffement nous puissent [17] de nostre garde [18] forbarrer.

Malm. A la commune ley coment [19] qe homme fut [20] feffé fesant plus ou meinz, il ne respont [21] ja [22] au bref de garde; si vous nous

[1] fee *P.* [2] x *P.* [3] The words in brackets are supplied from *P.* [4] *Om.* terre *D.* [5] *Ins.* taunt *P.* [6] *Ins.* qe *P.* [7] From *Y* (fol. 252 v°) collated with *C*, *Q* and *T*. The headnote is from *Q.* [8] par la reson *C*, *Q.* [9] *For* mees e terre *subs.* tenementz *C*, *Q.* [10] sunt *C*, *Q.* [11] deivent estre respoundu *T.* [12] *Om.* ne *T.* [13] car il *C*, quar il *Q*, q'il *T.* [14] *Om.* si *T.* [15] pur *C*, *Q.* [16] *Ins.* nul *C*, *Q.* [17] deyvent *C*, *Q.* [18] accioun *C*, *Q.* [19] coveynt *Q.* [20] seit *C*, *Q.* [21] respondra *C*, revendra *Q.* [22] mye *C*, *Q.*

Malberthorpe put forward the charter of John which stated that he had given the tenements to Roger and Melior his wife in fee tail rendering to him therefor for a term of eight years a rose, and after the eight years [ten] pounds a year.

Herle. Now it appears that this feoffment was made fraudulently.

Malberthorpe. This is not fraudulent, for three Cornish acres of land amount to as much as three carucates in these parts. Therefore there is no collusion, for three carucates of land are worth more than ten pounds a year.

Bereford C.J. There is nothing to do but to inquire about the fraud according to the statute etc.

III.

A writ of wardship. The tenants alleged that they were tenants of the frank tenement; and then showed how they were by a feoffment; and it was said that this was made by collusion.

Walter the bishop of Exeter brought his writ of wardship against Roger le Taillour of [Bodmin] and Melior his wife and demanded the wardship of a messuage and a carucate of land with the appurtenances etc. and said that the wardship belonged to him because John Arundel held the aforesaid messuage and land of Thomas bishop of Exeter his predecessor by knight's service etc.

Malberthorpe. Sir, Roger and Melior tell you that the tenements contained in the writ are their frank tenement, and we ask judgment whether of their frank tenement they ought to make answer to any writ of wardship.

Stanton J. You say too little, if you do not say how they are their frank tenement.

Friskeney. The bishop cannot be a party to try our frank tenement. He demands wardship only, and wardship is a chattel only. But if the heir of John Arundel would like to purchase a writ to try the frank tenement we would tell him sufficiently how we have come to it.

Herle. John of Arundel leased these tenements to Roger and Melior his wife for a term of years, and for the security of their term made to them a pretended feoffment, to wit, one by which they were to render to John of Arundel and his heirs more services than the land was worth. We ask judgment whether by such a pretended feoffment they can bar us of our wardship.

Malberthorpe. At the common law, although a man be enfeoffed to do services, more or less, he makes no answer to a writ of wardship.

volez donqe oster del response qe commune ley nous [1] doune e ceo par estatut, si covent il qe vous diez qe les tenemenz nous furent lessez taunt qe [2] a un certein terme [3] fesaunt [4] un certein par an e après le terme auxi [5] un certein issi qe cele certein amounte plus qe la [6] value de la terre ; par quei acovent [7] qe vous baptizez la value de la terre [8] et auxi la quantité de la soumme [9] qe le tenaunt deit rendre [10] après le terme passé al feffour e a ses heirs, car autrement nous n'averiom mie le issue qe statut nous doune.

Herle. L'estat[ut] si[11] fut fet en avantage des chefs seignurs e pur la collusioun de tel maner de [12] feffements qe soleient estre feez par lour tenauntz pur toler auxi [13] lour gardes en qel cas le tenaunt e le feffee auxi bien se garderunt qe le seignur ne sache ne la value de la terre ne la charge après, pur quei il ne append pas a nous a saver ne l'un ne [14] l'autre [15] fors tant soulement a dire qe le feffement fuit feint. E d'autrepart statut doune issue ' quod inquiratur per testes nominatos in carta,' e ceo ne put estre si le tenaunt ne [16] fut feffé par chartre, e vous ne mostrez nule. Jugement etc.

Toud. Jon de Aroundel nous dona ceux tenemenz a nous e a nostre femme, e prest etc. ; e issi nostre fraunc tenement, jugement etc.

Herle. Il covendreit qe vous ussez chartre, einz qe nous peusoms estre a issue qe statut [17] doune etc.

Toud. Si nostre chartre fut arz ou en ascoun maner perdu [18] ne serei joe resceu al averement ? (*quasi diceret,* Sic).[19]

Herle. qe Jon de Arundel vous lessa *ut supra,* e en surté du terme vous fit [20] un feint feffement par fraude a toler nous la garde prest etc.

Et quia hii [21] qui fuerunt de consilio Rogeri uiderunt [22] quod plus ualeret habere [23] testes nominatos in carta [24] inquisicione quam alios sine testibus [25] et ideo monstrauerunt cartam.[26]

Frek. qe Jon de Arundel dona ceux tenementz a nous e a Meliore e a les heirs de nous deux cors engendrez par bone foy e nent par fraude [27] a toler le chef seignur sa garde, prest etc. (E mit a la court la chartre etc.)

Herle le revers.

Ideo inquiratur per testes nominatos in carta et alios etc. utrum

[1] ne *T.* [2] *Om.* taunt qe *C, Q.* [3] jour *C, Q.* [4] rendaunt *C, Q.* [5] *Ins.* fesaunt *T.* [6] a la *T.* [7] il covent *C,* il vous covent *Q,* il covient *T.* [8] *Om.* value . . . terre *T.* [9] *For* quantité . . . soumme *subs.* seisine *T.* [10] payer *C, Q.* [11] *Om.* si *C, Q, T.* [12] *Om.* maner de *C, Q.* [13] a eux *C,* eux *T.* [14] *Om.* le seignur . . . ne *C.* [15] *Om.* pur toler . . . lautre *Q.* [16] *Om.* ne *Q.* [17] *Ins.* nous *C, Q.* [18] *Om.* ou . . . perdu *C, Q.* [19] *For* quasi . . sic, *subs.* si serray *C, Q,* si serroie *T.* [20] ly feistes *C, Q.* [21] alii *T.* [22] *For* quia . . . . uiderunt, *subs.* Et alii intellexerunt *C, Q. Om.* uiderunt *T.* [23] *Sic C, Q, T. Om.* habere *Y.* [24] *Ins.* et *Y. Ins.* in *C, Q.* [25] *Om.* sine testibus *C, Q.* [26] *Ins.* et dixerunt per *C, T.* [27] *Om.* par fraude *C, Q.*

If you wish then to oust us from the answer which the common law gives us, and to do this by statute, you must say that the tenements were leased to us for a certain term, paying therefor a certain sum yearly, and after the term also a certain sum, which amounts to more than the value of the land. Therefore you must name the value of the land and also the amount of the sum which the tenant has to render to the feoffor and his heirs after the term has passed; for otherwise we should not have the issue which the statute gives us.

Herle. The statute was made for the benefit of the chief lords, and on account of the collusion in feoffments of this kind which used to be made by their tenants to deprive thus the lords of their wardships; and in such a case the tenant and the feoffee took good care that the lord knew neither the value of the land, nor the charge after the term. Therefore it is not for us to know either of these things, but it is only for us to say that the feoffment was pretended. Besides the statute gives the issue 'that inquiry be made by the witnesses named in the charter.' This cannot be done if the tenant was not enfeoffed by charter, and you show none. We ask judgment etc.

Toudeby. John of Arundel gave us these tenements to have to us and our wife; and ready are we etc.; and so this is our frank tenement. We ask judgment etc.

Herle. It is necessary that you have a charter before we can be at the issue which the statute gives etc.

Toudeby. If our charter were burnt or lost in any way should not I be received to this averment? (*implying that he would*).

Herle. That John of Arundel leased to you (as above) and for security of the term made a pretended feoffment fraudulently to deprive us of the wardship, ready etc.

And because Roger's counsel saw that it would be worth more to have the witnesses named in the charter put in the inquisition, than the other jurors without these witnesses, they showed the charter.

Friskeney. That John of Arundel gave these tenements to us and Melior and the heirs of our two bodies begotten in good faith and not fraudulently to deprive the chief lord of his wardship, ready are we etc. (And he put before the court the charter etc.)

Herle. The contrary.

Therefore let it be inquired by the witnesses named in the charter

feoffamentum etc. bona fide uel ad auferendum etc.[1] Mès la chartre voleit fesant les premereinz[2] aunez une rose et *postea* de an en an x livres scilicet,[3] si inueniatur quod summa quam[4] reddere debet post terminum[5] excedit uerum ualorem tenementorum, feoffamentum adiudicabitur fictum[6] per discrecionem iusticiariorum etc.

The Record of the Case.

De Banco Rolls, 4 Edw. II., Trinity (No. 187), r. 122d., Cornwall.

Rogerus le Taillur de Bodminia et Meliora uxor eius in misericordia pro pluribus defaltis etc.

Iidem Rogerus et Meliora summoniti fuerunt ad respondendum Waltero episcopo Exoniensi de placito quod reddant ei custodiam unius messuagii unius carucate terre cum pertinenciis in Tregeustok iuxta Wychiel que ad ipsum episcopum pertinet eo quod Iohannes de Arundel predicta messuagium et terram de quodam Thoma quondam episcopo Exoniensi predecessore predicti episcopi tenuit per seruicium militare etc. Et unde idem episcopus per Dauid de Seruyngton' attornatum suum dicit quod cum predictus Iohannes tenuisset de predicto episcopo predecessore etc. predicta tenementa etc. per homagium fidelitatem et seruicium feodi unius militis scilicet, ad scutagium domini regis quadraginta solidorum cum acciderit quadraginta solidos et ad plus plus et ad minus minus et ad faciendam sectam ad curiam ipsius episcopi de Pouton de tribus septimanis in tres septimanas de quibus homagio fidelitate et seruicio idem episcopus predecessor etc. fuit seisitus per manus predicti Iohannis ut per manus ueri tenentis sui et obiit in homagio ipsius episcopi predecessoris etc. et ea racione custodia predictorum tenementorum pertinet ad predictum episcopum nunc etc. predicti Rogerus et Meliora custodiam illam ei iniuste deforciant etc. unde dicit quod deterioratus est et dampnum habet ad ualenciam sexaginta librarum. Et inde producit sectam etc.

Et Rogerus et Meliora per Iohannem Hamelyn attornatum suum ueniunt et defendunt uim et iniuriam quando etc. Et dicunt quod non debent ei inde ad hoc breue de custodia respondere etc. quia dicunt quod predicta tenementa sunt liberum tenementum ipsorum Rogeri et Meliore et fuerunt die impetracionis breuis etc. Dicunt reuera quod predictus Iohannes de Arundel diu ante mortem suam dedit concessit et carta sua confirmauit ipsis Rogero et Meliore tres acras terre Cornubienses cum pertinenciis in predicta uilla infra quas tres acras terre Cornubienses predicta tenementa unde predictus episcopus nunc petit custodiam continentur etc. habendas eisdem Rogero et Meliore et heredibus de corporibus suis procreatis uel procreandis etc. de ipso Iohanne et heredibus suis reddendo inde annuatim ipsi Iohanni et heredibus suis uel suis assignatis primis octo annis post datam carte etc.

[1] *Om.* Herle . . . etc. *C, Q.* [2] *Ins.* primers viij *C, Q, T.* [3] *Om.* scilicet *C, Q, T. Ins.* et *Q.* [4] summam quandam *C, Q.* [5] *Ins.* qui *C, Q.* [6] *Om.* adiudicabitur fictum *C, Q. Ins.* etc. *C, Q.*

and others etc. whether the feoffment etc. was made in good faith or to deprive etc. The charter spoke of rendering during the earlier years a rose, and afterwards ten pounds yearly. If it be found that the sum which the feoffees ought to render after the term exceeds the true value of the tenements the feoffment will be adjudged pretended at the discretion of the justices etc.

Translation of the Record.

For the reference, see opposite.

Roger le Taillur of Bodmin and Melior his wife are in mercy for several defaults etc.

The same Roger and Melior were summoned to answer Walter bishop of Exeter on a plea that they render to him the custody of one messuage and one carucate of land with the appurtenances in Tregeustok next Withiel,[1] which belongs to him the said bishop on the ground that John of Arundel held the aforesaid messuage and land of one Thomas sometime bishop of Exeter, his predecessor, by knight service etc. And whereupon the same bishop by David of Servington his attorney says that (whereas the aforesaid John held of the aforesaid bishop his predecessor etc. the aforesaid tenements etc. by homage fealty and the service of the fee of one knight, to wit, forty shillings for the lord king's scutage of forty shillings when it should fall due, and for more more, and for less less, and by doing suit to the court of him the said bishop at Pawton[2] from three weeks to three weeks, of which homage fealty and service the same bishop, predecessor etc., was seised by the hands of the aforesaid John, as by the hands of his very tenant; and John died in the homage of him the said bishop, predecessor etc., and for that reason the custody of the aforesaid tenements belongs to the aforesaid bishop who now is etc.) the aforesaid Roger and Melior wrongfully deforce that custody from him etc. Whereupon he says that he is injured and has damage to the value of sixty pounds; and thereof he brings suit etc.

And Roger and Melior by John Hamelyn their attorney come and deny tort and force when etc. and they said that they ought not to answer him thereon on this writ of wardship etc. because they say that the aforesaid tenements are the frank tenement of them the said Roger and Melior, and were on the day of the purchasing of the writ etc. They say that in truth the aforesaid John of Arundel long before his death gave granted and with his charter confirmed to them the said Roger and Melior three Cornish acres of land with the appurtenances in the aforesaid vill (within which three Cornish acres of land the aforesaid tenements whereof the aforesaid bishop now demands the custody are contained etc.) to hold to the same Roger and Melior and the heirs of their bodies begotten or to be begotten etc., of him the said John and his heirs, rendering therefor annually to him the said John and his heirs or his assigns in the first eight years after the date of the charter

[1] This seems to be the place now called Tregustick, near Withiel some seven miles west of Bodmin.

[2] In the parish of St. Breock.

The Record of the Case—*continued.*

unam rosam etc. ad festum Natiuitatis sancti Iohannis Baptiste pro omni seruicio etc. Et post primos octo annos plenarie completos post datam eiusdem carte etc. decem libras sterlingorum ad quatuor anni terminos etc. Et proferunt predictam cartam hic inde inter eos indentatam, que predicta donum et concessionem testatur in forma predicta, cuius data est die Dominica proxima ante festum sancte Margarete uirginis anno regni regis Edwardi patris domini regis nunc tricesimo quarto. Vnde petunt iudicium etc.

Et episcopus dicit quod predicti Rogerus et Meliora feodum seu liberum tenementum in tenementis clamare non possunt uirtute predicte carte ad ipsum episcopum de custodia sua in hac parte precludendum. Dicit enim quod in statuto domini regis edito apud Marlebergh continetur quod de hiis qui terram suam tradere uolunt ad terminum annorum ut per hoc domini feodorum amittant custodias suas falsa fingunt feoffamenta capitales domini per huiusmodi ficta feoffamenta non amittant custodias suas etc. Et dicit quod predictus Iohannes de Arundel dimisit predictis Rogero et Meliore predicta tenementa tenenda ad terminum octo annorum tantum et pro securitate eis facienda de predicto termino finxit predictum feoffamentum reddendo inde post predictum terminum etc. predictas decem libras in multo excedentes uerum ualorem predictorum tenementorum ad auferendam capitalibus dominis custodiam predictorum tenementorum etc. Et hoc paratus est uerificare etc. Vnde petit iudicium etc.

Et Rogerus et Meliora dicunt quod predictus Iohannes de Arundel fecit eis predictum feoffamentum de predictis tenementis bona fide etc. et non per aliquam ficcionem etc. ad auferandam capitalibus dominis custodiam etc. sicut predictus episcopus dicit. Et de hoc ponit se super patriam et super testes nominatos in predicta carta etc. Et episcopus similiter. Ideo preceptum est uicecomiti quod uenire faciat hic in octabis sancti Martini Michaelem le Petit militem, Thomam de la Hyde, Oliuerum de Halap Robertum le Taillour et Willelmum Couling et Henricum Bisshop clericum etc. testes nominatos etc. Et preter illos duodecim per quos etc. et qui nec etc. ad recognoscendum etc. quia tam etc.

Postea a die Pasche in tres septimanas anno regni domini regis nunc quarto decimo continuato inde inter eos processu per iuratam positam in respectum, uenit predictus episcopus et predicti Rogerus et Meliora non uenerunt. Et Iohannes de Stonore coram quo etc. misit ueredictum iurate predicte hic in hec uerba :—

Postea apud Launceuaton die Lune proxima ante mediam quadragesimam coram Iohanne de Stonore associato sibi Willelmo de Boteraux milite uenerunt partes predicte per attornatos suos et similiter iuratores de consensu parcium electi simul cum Michaele le Petit uno testium qui dicunt super sacramentum suum quod Iohannes de Arundel die Dominica proxima ante festum sancte Margarete anno regni regis Edwardi patris regis nunc

Translation of the Record—*continued.*

etc. one rose etc. at the feast of the Nativity of St. John the Baptist for all service etc.; and after the first eight years fully completed from the date of the same charter etc. ten pounds sterling at the four quarter days of the year etc. And they proffer the aforesaid charter here thereof between them indented which witnesses the aforesaid gift and grant in the form aforesaid; and the date of this charter is the Sunday [1] next before the feast of St. Margaret the virgin in the thirty-fourth year of the reign of king Edward the father of the lord king who now is. Whereupon they ask judgment etc.

And the bishop says that the aforesaid Roger and Melior cannot claim by virtue of the aforesaid charter fee or frank tenement in the tenements by virtue of the aforesaid charter so as to exclude him the said bishop from his wardship in this behalf; for he says that in the statute of the lord king published at Marlborough [2] it is contained concerning those who wish to deliver their land for a term of years, so that thereby the lords of the fees may lose their wardships, and feign false feoffments, that the chief lords are not to lose their wardships etc. by such feigned feoffments. And he says that the aforesaid John of Arundel demised the aforesaid tenements to the aforesaid Roger and Melior to hold for a term of eight years only, and for creating a security for them of the aforesaid term, he feigned the aforesaid feoffment, rendering therefor after the aforesaid term etc. the aforesaid ten pounds much in excess of the true value of the aforesaid tenements, to take away from the chief lords the wardship of the aforesaid tenements etc. And this he is ready to aver etc. Whereupon he asks judgment etc.

And Roger and Melior say that the aforesaid John of Arundel made the aforesaid feoffment of the aforesaid tenements to them in good faith etc. and not by any pretence etc. to take away from the chief lords the wardship etc. as the aforesaid bishop says. And of this he puts himself upon the country and upon the witnesses named in the aforesaid charter etc. And the bishop likewise. Therefore the sheriff is ordered to cause to come here on the octave of St. Martin Michael le Petit knight, Thomas de la Hyde, Oliver of Halap, Robert le Taillur and William Couling and Henry Bisshop clerk etc. the witnesses named etc. and besides these twelve men by whom etc. and who neither etc. to make recognition etc. because as well etc.

Afterwards three weeks after Easter [3] in the fourteenth year of the reign of the lord king who now is, when process thereon between them had been continued by a jury put in respite, the aforesaid bishop came and the aforesaid Roger and Melior came not. And John of Stonore before whom etc. sent the verdict of the jury aforesaid here in these words:—

Afterwards at Launceston on the Monday [4] next before Midlent before John of Stonore with William de Boteraux knight as his associate came the parties aforesaid by their attorneys, and likewise the jurors chosen by the consent of the parties together with Michael le Petit one of the witnesses; and the jurors say upon their oath that John of Arundel on the Sunday [1] next before the feast of St. Margaret in the thirty-fourth year of the reign

[1] 17 July 1306. [2] Stat. Marlb. c. 6. [3] 10 May 1321. [4] 29 March 1321.

The Record of the Case—*continued.*

tricesimo quarto dimisit predicta tenementa predicto Rogero tenenda ad terminum octo annorum tantum pro quadam summa pecunie in qua idem Iohannes tenebatur predicto Rogero et pro securitate termini predicti habenda idem Iohannes fecit predictis Rogero et Meliore predictam cartam feoffamenti tantum ita quod post terminum predictum predicta tenementa eidem Iohanni retradita fuissent et non alio modo ; et dicunt quod predictus Iohannes de Arundel obiit in festo apostolorum Petri et Pauli anno regis predicti tricesimo quinto, a quo tempore idem Rogerus et Meliora integre tenuerunt predicta tenementa per octo annos proximo sequentes et tunc assignauerunt terciam partem tenementorum predictorum cuidam Iohanne que fuit uxor predicti Iohannis de Arundel tenendam in dotem, a tempore cuius assignacionis predicti Rogerus et Meliora duas partes et predicta Iohanna terciam partem predictorum tenementorum hucusque tenuerunt. Et iuratores quesiti eciam de dampnis dicunt quod ad dampnum ipsius episcopi decem librarum preter ualorem exituum predictorum tenementorum per totum tempus. Quesiti eciam si heres predicti Iohannis sit infra etatem dicunt quod sic. Ideo consideratum est quod predictus episcopus recuperaret uersus eos predictam custodiam et similiter dampna sua cum exitibus tenementorum predictorum de tempore predicto excepta predicta tercia parte assign[ata nomine] dotis predicte etc. que summantur in toto ad quater uiginti et duas libras ; et Rogerus et Meliora in misericordia.

Et super hoc predictus episcopus elegit sibi liberari etc. Ideo habeat breue per statutum ; et qualiter etc. scire faciat hic a die sancte Trinitatis in xv dies etc.

Dampna iiij^{xx} et ij libre unde clericis C solidi.

36. DYNE *v.* CANEUN.[1]

Ravisement de garde, ou il dit en le bref *quare ui et armis*, et ceo fut chalengé pur ceo qe statut ne doune pas telles paroles. Hoc non obstante, le bref fut agardé bon.

Bref de ravissement de garde fu porté vers un homme e sa femme e le bref voleit [2] *quare ui et armis* etc.

Migg. Ce bref est doné par statut e par expresse paroles, dont il n'y ad my tele forme *quare ui et armis* en statute. E demandoms jugement du bref.

Scrop. Ceo est un bref encontre la pees ou il covent aver *quare ui et armis* etc.

Claver. Sire, il y ad tel bref pendant ceynz, e issi n'est pas le jugement rendu sur tiel excepcion.

From *D* collated with *P*. The headnote is from *P*. [2] *Om.* voleit *D*.

Translation of the Record—*continued.*

of king Edward the father of the king who now is, demised the aforesaid tenements to the aforesaid Roger to hold for a term of eight years only for a certain sum of money in which the same John was bound to the aforesaid Roger and for having security for the aforesaid term the same John made to the aforesaid Roger and Melior the aforesaid charter of feoffment, only so that after the aforesaid term the aforesaid tenements should be re-delivered to the same John and not otherwise. And they say that the aforesaid John of Arundel died on the feast [1] of the apostles Peter and Paul in the thirty-fifth year of the king aforesaid, and from that time the same Roger and Melior held in their entirety the aforesaid tenements for the eight years next following, and then assigned a third part of the tenements aforesaid to one Joan the widow of the aforesaid John of Arundel to be held in dower, and from the time of this assignment till now the aforesaid Roger and Melior have held two parts and the aforesaid Joan the third part of the aforesaid tenements. And the jurors being asked about the damages say that this was to the damage of him the said bishop of ten pounds beyond the value of the issues of the aforesaid tenements during the whole period. And being asked whether the heir of the aforesaid John is within age, they say that he is. Therefore it was awarded that the aforesaid bishop should recover against them the aforesaid wardship and likewise his damages together with the issues of the tenements aforesaid from the time aforesaid, except the issues of the aforesaid third part assigned in name of dower aforesaid etc. which damages amount in all to four score and two pounds, and that Roger and Melior be in mercy.

And upon this the aforesaid bishop elected that these be delivered to him etc. Therefore let him have a writ under the statute,[2] and how etc. let him make known here fifteen days after Trinity etc.

Damages £82 whereof to the clerks £5.

36. DYNE *v.* CANEUN.

A writ of ravishment of ward, where the writ contained the words *quare ui et armis*. This was challenged because the statute [3] does not give such words. This notwithstanding the writ was awarded good.

A writ of ravishment of ward was brought against a man and his wife, and the writ contained the words *quare ui et armis* etc.

Miggeley. This writ is given by statute, and in express words; and there is not this form *quare ui et armis* in the statute. We ask judgment of the writ.

Scrope. It is a writ against the peace, in which it is necessary to have *quare ui et armis* etc.

Claver. There is a writ like this now pending here and judgment has not been given on a like exception to it.

[1] 29 June 1307. [2] Stat. Westm. II. c. 18. [3] Stat. Westm. II. c. 35.

Hervi. Vous dites mal, qe jeo ne oy cest an [1] nul tel chalenge ceinz.

Migg. Sire, vous veiez bien coment il afferme tenance en la persone l'auncestre l'enfaunt, q'il fut son tenant [2]; il ne tent rens de lui, prest etc.

Scrop. C'est un bref de trespas encountre la pees ou il covent respondre al ravissement s'il ne affermast dreit de garde en sa persone. E demandoms jugement.

Ber. Il vous dit qe l'auncestre l'enfaunt ne tient rens de vous e par tant defait il la cause de vostre accion. Vodriez vous donqe q'il affermast dreit de garde en sa persone ou par cas vous ne lui ne avetz dreit ?

Clav. Si jeo [3] vous disseisi de vostre franc tenement e jeo sei de ceo oustée, jeo porteroi l'assise e recoveroi.

Ber. En cas vous ne prendretz rens, qe si vous moy disseissistes e jeo vous ouste freschement, e vous portez l'assise vous ne en porterez [4] rens, par quei pledez vostre matere.

Migg. Sire, nous vous dioms qe le piere l'enfant tent de T. pur un dener pur touz seruices. E issi appent la garde a ceste femme mere l'enfaunt com a plus prochein amy [5] a qi heritage ne put descendre, issi ne tent il rens de lui en chevalrie. Prest etc.

Scrop. qe l'auncestre l'enfaunt tent de nous par service de chivaler prest etc.

The Record of the Case.

De Banco Rolls, 4 Edw. II., Trinity (No. 187), r. 131, Northamptonshire.

Simon Caneun de Holewell' in misericordia pro pluribus defaltis etc.

Idem Simon attachiatus fuit ad respondendum Roberto Dyne de Holewell' de placito quare Willelmum filium et heredem Stephani Lot infra etatem existentem cuius maritagium ad ipsum Robertum pertinet apud Holewell' inuentum ui et armis rapuit et abduxit contra uoluntatem ipsius Roberti et contra pacem etc. Et unde idem Robertus per attornatum suum queritur quod cum predictus Stephanus pater predicti heredis tenuisset de ipso Roberto quartam partem unius messuagii et unius uirgate terre cum pertinenciis in Holewell' per homagium fidelitatem et per scutagium etc. uidelicet ad scutagium domini regis quadraginta solidorum cum acciderit septem denarios et ad plus plus et ad minus minus etc. et obiisset in homagio suo etc. per quod custodia et maritagium predicti heredis ad ipsum Robertum pertinet etc. predictus Simon prefatum heredem apud Holewell' inuentum die Lune

[1] *Om.* cest an *P.* [2] *Ins.* Sire *P.* [3] *Om.* jeo *D.* [4] porteriez *D.* [5] *Ins.* l'enfaunt *P.*

Stanton J. You are wrong; for I have not this year heard any such challenge here.

Miggeley. Sir, you see how he affirms the tenancy in the person of the ancestor of the infant, saying that he was his tenant. Sir, he held nothing of the plaintiff. Ready etc.

Scrope. This is a writ of trespass against the peace, on which it is necessary to answer to the ravishment, unless he affirms right of wardship in his own person. We ask judgment.

Bereford C.J. He tells you that the ancestor of the infant held nothing of you, and thereby he destroys the cause of your action. Would you then have him affirm a right of wardship in his own person, where it may be that neither you nor he have right?

Claver. If I disseised you of your frank tenement and I were ousted from it, I should bring the assize and recover.

Bereford C.J. You might perchance take nothing, for if you disseised me, and I ousted you immediately, and if you brought the assize, you would take nothing by it. Therefore plead on the matter of the writ.

Miggeley. Sir, we tell you that the father of the infant held of T. by one penny for all services. Therefore the wardship belongs to this woman, the mother of the infant, as his next friend to whom the inheritance cannot descend. Therefore he holds nothing of the plaintiff in knight's service. Ready etc.

Scrope. We say that the infant holds of us by knight's service. Ready etc.

Translation of the Record.

For the reference, see opposite.

Simon Caneun of Hollowell in mercy for several defaults etc.

The same Simon was attached to answer Robert Dyne of Hollowell[1] on a plea why with force and arms he ravished and carried away against the will of him the said Robert and against the peace etc. William the son and heir of Stephen Lote found at Hollowell who is within age, and whose marriage belongs to him the said Robert. And whereupon the same Robert complains by his attorney that (whereas the aforesaid Stephen the father of the aforesaid heir held of him the said Robert the fourth part of one messuage and one virgate of land with the appurtenances in Hollowell by homage fealty and scutage etc., to wit, for the lord king's scutage of forty shillings when it falls due seven pence, and for more more and for less less etc. and died in the homage of the said Robert etc. whereby the wardship and marriage of the aforesaid heir belongs to him the said Robert) the aforesaid Simon on Monday[2] the

[1] Hollowell also called Holywell is a hamlet of Guilsborough.

[2] 30 November 1310. Apparently the regnal year should be the fourth and not the third as St. Andrew's Day fell on a Monday in the fourth year.

The Record of the Case—*continued.*

in festo sancti Andree apostoli anno domini regis nunc tercio rapuit et abduxit contra uoluntatem ipsius Roberti et contra pacem etc. unde dicit quod deterioratus est et dampnum habet ad ualenciam centum librarum. Et inde producit sectam etc.

Et Simon per attornatum suum uenit et defendit uim et iniuriam quando etc. et dicit quod predictus Robertus iniuste queritur etc. Dicit enim quod predictus Stephanus pater predicti heredis tenuit tenementa sua in Holewell' in socagium de quodam Roberto de Watford per fidelitatem et seruicium septem denariorum per annum pro omni seruicio etc. per quod predictus heres est nunc in custodia cuiusdam Iuliane matris sue uxoris ipsius Simonis et ipsius Simonis racione nutriture ut propinquioris amite etc. unde bene defendit quod predictus Stephanus pater predicti heredis non tenuit de ipso Roberto per seruicium militare sicut idem Robertus dicit. Et de hoc ponit se super patriam etc. Et Robertus similiter etc. Ideo preceptum est uicecomiti quod uenire faciat hic in crastino sancti Martini xij etc. per quos etc. et qui nec etc. quia tam etc.

Et sciendum quod uicecomes comitatus predicti cui preceptum fuit quod diligenter inquireret ubi predictus heres esset in balliua etc. et ipsum ubicunque caperet et saluo etc. ita quod eum nunc haberet hic ad reddendum cui etc. modo ducit hic predictum heredem in custodia predictorum Simonis et Iuliane inuentum etc. Et liberatur per curiam etc. eisdem Simoni et Iuliane saluo et secure custodiendus quousque discussum sit etc. Et inuenerunt manucaptores quod ipsi non maritabunt nec elongabunt predictum heredem infra tempus predictum donec discussum etc. scilicet Simonem de Cranesle, Willelmum de Bramfeld', Thomam de Clipston', Willelmum de Lilleburn, Willelmum le Butiller de Kynelingworth et Iohannem Bereuill' de comitatu predicto qui pro eis manuceperunt etc. et in forma predicta etc. ad restituendum curie etc. ipsum heredem cum etc.

37. ALET *v.* NAUSLADRON.

I.[1]

Wast ou le defendant myst avaunt fait qe luy lust a faire son profit en la manere meillour q'il sout sanz contradiccioun del demaundant ou ses heirs etc.

Deux seors[2] porterent lour bref du[3] wast devers Serle de Nauslader' et assignerent le wast en meisouns gardeyns boys a luy lessez a terme de vie etc.

Migg. Nous demaundoms oye du bref. (Et le bref voleit 'Pone Serlonem.')

[1] From *B* collated with *G*, *M*, *T*, and as to part with *P*. [2] parceners *M*. *Ins.* et coheirs *T*. [3] de *G*, *M*.

Translation of the Record—*continued.*

feast of St. Andrew the apostle in the third year of the lord king who now is, ravished and carried away the aforesaid heir found at Hollowell against the will of him the said Robert and against the peace etc. Whereupon he says that he is injured and has damage to the value of one hundred pounds; and thereof he brings suit etc.

And Simon by his attorney comes and denies tort and force when etc. and says that the aforesaid Robert complains wrongfully etc.; for he says that the aforesaid Stephen the father of the aforesaid heir held his tenements in Hollowell in socage of one Robert of Watford by fealty and the service of seven pence a year for all service etc.; by which the aforesaid heir is now in the ward of one Gillian his mother the wife of him the said Simon and of Simon himself by reason of nurture as his next friend etc. whereupon he well denies that the aforesaid Stephen the father of the aforesaid heir held of him the said Robert by knight service as the same Robert says; and of this he puts himself upon the country etc. and Robert likewise etc. Therefore the sheriff is ordered to cause to come here on the morrow of St. Martin twelve etc. by whom etc. and who neither etc. because as well etc.

And be it known that the sheriff of the county aforesaid who was ordered to inquire diligently where the aforesaid heir might be in his bailiwick etc. and to take him wheresoever he might be, and safely etc. so that he have him here now etc. to render to whom etc. now brings here the aforesaid heir, who was found in the custody of the aforesaid Simon and Gillian etc. And he is delivered by the court etc. to the same Simon and Gillian to be safely and securely kept until the matter has been discussed etc. And they found mainpernors that they would not marry nor eloign the aforesaid heir within the period aforesaid until the matter has been discussed etc., to wit, Simon of Cranesle, William of Bramfeld, Thomas of Clipston, William of Lilleburn, William le Butiller of Kynelingworth, and John Berevill of the county aforesaid, who pledged themselves for them etc. and in the form aforesaid etc. and to restore him the said heir to the court etc. when etc.

37. ALET *v.* NAUSLADRON.[1]

I.

A writ of waste. The defendant put forward a deed which permitted him to make his profit in the best way in which he could without contradiction by the demandant or his heirs etc.

Two sisters brought their writ of waste against Serle of Nausladron, and assigned the waste in houses gardens and woods leased to him for a term of life etc.

Miggeley. We ask oyer of the writ. (The writ said, *Pone Serlonem.*)

[1] This is *Fitz.* Book iii. fol. 157, Waste, No. 11.

Migg. Jugement du bref, qare la ou le bref le nome Serlo, soun noun est Saerius. Jugement etc.

Herle.[1] L'un noun et l'autre s'attendent[2] en Latyn a un noun en Fraunceys, *scilicet,* Serle. Et d'autrepart etc. il ad avant cels hures pledé ceynz ou soun noun fust accepté de courte. Et fust nomé Serle et de ceo vouchoms recorde des roules, si vous etc. Et demaundoms jugement etc.

Migg. Walter de Alet[3] qi heirs eux sount etc. par son fait nous graunta le maner de Alet, ou vous assignetz ceo wast estre fait, a avoir et tener a tote nostre vie et nous granta et dona pouwer[4] par meisme le fait a prendre et faire nostre profit du manoir avantdit en la meillour manere qe nous veissoms qe fust affaire sauntz nule manere contredist del avantdit W. ou de ses heirs.[5] Jugement si encountre le fait lour auncestre qi heir etc. cestuy bref vers nous puissent user.

Et myst avant fait a la courte en la quele yl y avoit cele clause 'quod nec ego dictus Walterus nec heredes mei uersus predictum Saerum aliquam accionem attemptare[6] quin liceat ei de predicto manerio comodum suum facere quo meliore modo sibi uiderit expedire sine aliqua contradiccione etc.'

Herle.[7] Coment qe vous mettez vostre excepcioun al bref, ele est al accioun; et desicom le fait qe vous mettez avaunt en excusant vostre torte ne proeve mye la tenaunce[8] estre plus large en ceo maner qe a terme de vie, ne ne veot pas q'il list a vous[9] de faire wast, jugement etc.

Migg. Tut eussoms fait wast etc.[10] ceo serroit nostre profit, et desicome le fait vostre auncestre nous doune tiel power de faire nostre profit etc. saunz nul chalange[11] etc. jugement du bref.

Herle. Vostre prou serroit de vendre le manoir pur mil marz. Le poetz vous faire ?[12] (*quasi diceret,* Noun).

Stanton. C'est un malvoix consequencye; il moy list a faire mon profit du manoir al meillour manere qe jeo voi qe soit[13] affaire, *ergo* il moy list affaire wast. *Non ualet.*

Herle. Celuy qe veot estre eidé par fait encountre commune droit et encountre statut, il covent qe le fait luy doune pleyne power com par my les paroles expressement notez[14] en le fait a cele chose faire q'est encountre commune droit. Et desicom le fait q'il mette avant proeve la tenaunce a terme de vie,[15] ou ne lyst mye par statut a faire wast ne le fait ne luy doune mye pleyn power par my paroles expresses q'a luy list affaire wast. Jugement si par my ceo fait[16] se puisse excuser.

[1] *Pass. M, T. Om. Herle G.* [2] se estendent *T.* [3] Alternon *M. Ins.* lor piere *G,* vostre piere *M, T.* [4] *Om.* pouwer *B.* [5] From this point the report is collated with *P.* [6] possumus intentare *P, T.* [7] *Ber. T.* [8] estat *M.* [9] *Om.* a vous *G, T.* [10] *Ins.* quant a nous *P, T.* [11] contredit *T. Ins.* de nully *M, P, T.* [12] *Ins.* par vertue de cele fet *M, T,* Sim. *P.* [13] fet *M.* [14] motez *G, M,* notez *B, P, T.* [15] *Om.* a . . . vie *G, M, P, T. Ins.* tiel *M, P, T.* [16] *Ins.* de ceo waste *P, T.*

Miggeley. We ask judgment of the writ, for the writ names him *Serlo*; and his name is *Saerius*. We ask judgment etc.

Herle. Both names in Latin correspond to a single name in French, that is to say *Serle*. And further etc. he has heretofore pleaded here, and his name was accepted by the court. He was named *Serle* and of this we vouch the record of the rolls, if you etc. And we ask judgment etc.

Miggeley. Walter of Alet, whose heiresses the plaintiffs are etc., by his deed granted to us the manor of Alet, in which you allege this waste to have been made, to have and to hold all our life; and he granted and gave us by the same deed power to take and make our profit from the manor aforesaid in the way which to us seemed best, and this was to be done without any kind of contradiction by the aforesaid Walter or his heirs. We ask judgment whether against the deed of their ancestor whose heiresses they are, they can use this writ against us.

And he put the deed before the court in which there was this clause —that neither I the said Walter nor my heirs will bring any action against the aforesaid Saer, but that it shall be lawful for him to make his profit of the aforesaid manor in such way as may seem most fitting to him without any contradiction etc.

Herle. Although you make your exception to the writ, it is an exception to the action, and inasmuch as the deed which you put forward to excuse your wrong does not show that the tenancy in this manor is larger than for a term of life, and does not say that it is lawful for you to make waste, we ask judgment etc.

Miggeley. Though we have made waste etc. this should be our profit, and inasmuch as the deed of your ancestor gives us such power to make our profit etc. without any challenge etc., we ask judgment of the writ.

Herle. Your profit might be to sell the manor for a thousand marks. Could you do that? (*implying, that he could not*).

Stanton J. This is a bad conclusion. It is lawful to make my profit of the manor in such way as may seem most fitting to me, therefore I may make waste. That is not a good inference.

Herle. If a man wishes to be aided by a deed against common right, and against statute, his deed must give him full power, as by words expressly mentioned in the deed, to do that thing which is against common right. And inasmuch as the deed which he puts forward proves the tenancy to be for a term of life, in which tenancy it is not lawful under the statute [1] for him to make waste, and inasmuch as the deed does not give him full power by express words, stating that it is lawful for him to make waste, we ask judgment whether he can excuse himself by this deed.

[1] Stat. Glouc. c. 5; Stat. Westm. II. c. 14.

Berr.[1] Le fait veot, 'Liceat sibi comodum suum facere meliori modo quo sibi uiderit expedire.' Et celes paroles 'en la meillour manere q'il veit [2] espleiter' [3] put avoir double entendement. Un est q'a [4] luy list a faire son profit a la meillour manere etc. issy qe ceo ne chiet [5] mye en desheritance. Vn altre entendement est a faire son profist [6] qe chiet en [7] disheritance, queu manere de proffit est encountre statut, par quei plus tost devoms jugger le fait solom l'entendement [8] q'est plus acordant au ley et a reison q'al entendement q'est encountre ley.[9] Par quei dites nous si vous voillez demorir la al peril q'appent.

Migg. Nous avoms [10] pledé sinoun [11] al bref.

Berr. Vous avetz ensi pledé qe si vous demoretz [12] et le jugement passe encountre vous, vous estes atteynt del wast.[13]

Et pur ceo qe *Pass.* et *Migg.* virent qe le jugement passeroit encountre eux, il weyverent lour excepcioun et disoient [14] qe nul wast fait, prest etc.

II.[15]

Waust ou le tenant bota avant fait le feffour qe tesmoigna q'il pout le wast faire.

Deux parceners A. e W. porteront lour bref de waust vers Serle de Landeroun e conta qe ne list pas a nuli des tenemenz[16] lessez a terme de vie ne des auntz de faire wast de maisons gardyns etc.[17] e assigna le waste de tant de terre fowé après argil e veut[18] turbarie fowé tanqe al gravell issi qe les terres ne pount estre gayntz,[19] e de tant de maisons gaynes[20] e emportéz pris de tant, e exil des hommes issi qe par sa outraiouse destrucion il lesseront lour terres al damage etc.

Mig. Sire, nous vous dioms qe l'auncestre A. e W. dona le manoir de E. a Serle a terme de sa vie e graunta pur lui e pur ses heirs q'il se pout enprower sanz chalenge ou estre grevé de lui ou de ses heirs ; et demandoms jugement.

Ber. Donqe volez vous dire por ceo q'il vous granta d'enprower etc. qe par tant poetz faire waste etc. e qe waste tenemenz est malveys emprowèment e ceo n'est pas enprowement.

[1] *Scrop. T.* [2] voit *G*, se veut *M*, veie *T.* [3] *Om.* q'il veit expleiter *P.* [4] si *M.* [5] tourne *P.* [6] *Om.* a faire son profist *M.* [7] encountre *T.* [8] *sic G, M. Om.* solum l'entendement *B.* [9] l'un et lautre *T.* [10] n'avoms *G, T,* le avoms *P.* [11] *For* pledé sinoun, *subs.* mys *P,* mes *T.* [12] *Ins.* la en jugement *M, P, T.* [13] *Ins.* E pur ceo respoundez etc. *P.* [14] tindrent *P,* tindrent l'averement *T.* [15] From *D.* The first two paragraphs are here collated with *P,* which then continues differently as in the first report of this case. [16] *Ins.* a ly *P.* [17] ou terres *P.* [18] vend' *P.* [19] gaynez *P.* [20] abatuz *P.*

Bereford C.J. The deed says: It shall be lawful for him to make his profit, in such way as may seem most fitting to him, and the words 'in such way as may seem most fitting to him' may have a double meaning. One is that it is lawful for him to make his profit in such way etc., so that this way does not cause disinheritance. The other is to make his profit in a way which causes disinheritance. And this kind of profit is contrary to the statute. Therefore we ought to judge the deed, in accordance [with that meaning] which accords best with law and equity, rather than in accordance with a meaning which is contrary to the law. Therefore tell us if you wish to stand by this plea at the peril which attaches to it.

Miggeley. Sir, we have not pleaded except on the writ.

Bereford C.J. You have so pleaded that if you abide by your plea, and judgment pass against you, you are convicted of waste.

And because *Passeley* and *Miggeley* saw that judgment would pass against them, they waived their exception and said that no waste had they made, ready etc.

II.

A writ of waste. The tenant put forward the feoffor's deed which witnessed that he could make the waste.

Two parceners [Margery and Eleanor] brought their writ of waste against Serle of Nausladron and counted that it was not lawful for any man to make waste of the tenements houses gardens etc. leased to him for a term of life or years, and assigned the waste as of so much land dug for clay, and[1] of turbary dug as far as the gravel, so that the lands could not be tilled, and of so many houses pulled down[2] and carried away, and of exile of men, so that by his outrageous distresses they left their lands, to the damage etc.

Miggeley. Sir, we tell you that the ancestor of Margery and Eleanor gave the manor of Alet to Serle for the term of his life, and granted for himself and his heirs that he could make his profit without challenge or being hindered by him or his heirs. We ask judgment.

Bereford C.J. Then will you say that because he granted you power to make a profit, thereby you can make waste? Waste of tenements is an improper making of profit, and this is not a making of profit.

[1] The 'veut' of the French text, which is probably written in error, is not translated.

[2] See note 20 opposite.

Et pur ceo qe *Migg.* vist qe cel fait ne barreit mye accion de waste dit qe nul wast fait, prest etc.

Et alii econtra.

The Record of the Case.

De Banco Rolls, 4 Edw. II., Trinity (No. 187), r. 116, Cornwall.

Serlo de Nausladron summonitus fuit ad respondendum Margerie filie Walteri Alet et Alienore sorori eiusdem Margerie de placito quare cum de communi consilio regni regis prouisum sit quod non liceat alicui uastum uendicionem destruccionem seu exilium facere de terris domibus boscis gardinis seu hominibus sibi dimissis ad terminum uite uel annorum Idem Serlo de terris domibus boscis gardinis turbariis et hominibus in Alet que Walterus de Alet pater predictarum Margerie et Alienore cuius heredes ipse sunt prefato Serloni dimisit ad uitam eiusdem Serlonis fecit uastum uendicionem destruccionem et exilium ad exheredacionem earundem Margerie et Alianore etc. Et unde eedem Margeria et Alianora per custodem suum queruntur quod cum predictus Serlo teneat ad terminum uite sue de hereditate ipsarum Margerie et Alianore manerium de Alet cum pertinenciis ex dimissione predicti Walteri patris etc. Idem Serlo fecit uastum in eodem manerio uidelicet prosternendo unam cameram precii sexaginta solidorum unam grangiam precii quatuor librarum unam bercariam precii quadraginta solidorum duas domos cotariorum precii quatuor librarum et fodiendo unam acram terre et terram inde asportando et turbas fodiendo in uiginti acris turbarie et deuastando predictam turbariam etc. succidendo quinque milia quercuum precii cuiuslibet quadraginta denariorum, quadraginta pomeria precii cuiuslibet quatuor solidorum sexaginta fraxinos precii cuiuslibet dimidie marce et exulando homines et tenentes de eodem manerio uidelicet quemdam Ricardum Blaca qui tenuit dimidiam acram terre Cornubiensem Dauid Blaca tenentem unum messuagium et dimidiam acram terre Cornubiensem et Iohannem le Provost tenentem unum messuagium et dimidiam acram terre Cornubiensem ad exheredacionem ipsarum Margerie et Alianore etc. Unde dicunt quod deteriorate sunt et dampnum habent ad ualenciam centum librarum. Et inde producunt sectam etc.[1]

Et Serlo per attornatum suum uenit, et defendit uim et iniuriam quando etc. et bene defendit quod ipse nullum fecit uastum uendicionem destruccionem uel exilium etc. sicut predicte Margeria et Alianora ei imponunt etc. Et de hoc ponit se super patriam. Et Margeria et Alianora similiter.

Ideo preceptum est uicecomiti quod in propria persona etc. accedat ad predicta tenementa et ibidem coram se uenire faciat duodecim etc. per quos etc. et qui nec etc. et per eorum sacramentum in presencia parcium ad hoc premunitarum inquirat de uasto predicto etc. et inquisicionem etc. scire faciat in crastino sancti Martini sub sigillo et sigillis etc. quia tam etc.

[1] The word ‘ cras ’ is here written in the margin of the roll.

And because *Miggeley* saw that this deed would not bar the action of waste, he said :—No waste done. Ready etc.

And the others to the contrary.

Translation of the Record.

For the reference, see opposite.

Serle of Nausladron was summoned to answer Margery the daughter of Walter Alet and Eleanor sister of the same Margery on a plea why—(whereas of the common council of the king's realm it has been provided[1] that it is not lawful for anyone to make waste sale destruction or exile of lands houses woods gardens or men demised to him for a term of life or years)—the same Serle of the lands houses woods gardens turbaries and men in Alet[2] which Walter of Alet the father of the aforesaid Margery and Eleanor whose heiresses they are demised to the aforesaid Serle for the term of his life made waste sale destruction and exile to the disinheritance of the same Margery and Eleanor etc. And whereupon the same Margery and Eleanor by their guardian complain that whereas the aforesaid Serle holds for the term of his life of the inheritance of them the said Margery and Eleanor the manor of Alet with the appurtenances by the demise of the aforesaid Walter their father etc., the same Serle made waste in the same manor, to wit, by pulling down a chamber of the price of sixty shillings a grange of the price of four pounds a sheep house of the price of forty shillings two houses of cottagers of the price of four pounds and by digging one acre of land and carrying the earth therefrom and by digging turves in twenty acres of turbary and by making waste of the aforesaid turbary etc., by felling five thousand oaks each of the price of forty pence forty apple trees each of the price of four shillings sixty ash trees each of the price of half a mark and by exiling men and tenants from the same manor, to wit one Richard Blaca who held half a Cornish acre of land David Blaca who held a messuage and half a Cornish acre of land and John le Provost who held a messuage and half a Cornish acre of land to the disinheritance of them the said Margery and Eleanor etc. Whereupon they say that they are injured and have damage etc. to the value of one hundred pounds. And thereof they bring suit etc.

And Serle comes by his attorney and denies tort and force when etc. And well he denies that he made any waste sale destruction or exile etc. as the aforesaid Margery and Eleanor impute to him etc. And of this he puts himself upon the country, and Margery and Eleanor likewise.

Therefore the sheriff is ordered that in his own person etc. he approach the aforesaid tenements and cause to come before him there twelve etc. by whom etc. and who neither etc. and that by their oath in the presence of the parties for this forewarned, he inquire of the waste aforesaid etc. and that he cause the inquisition etc. to be known here on the morrow of St. Martin under the seal and seals etc. because as well etc.

[1] Stat. Marlb. c. 23.

[2] Allet (also called Edles) is now a small property in Kenwyn, and Nausladron seems to be the place now known as Lanhadron in St. Ewe.

38. SPECIAL CASES.[1]

(1) Bref est porté vers un homme qe descleyme en la tenaunce. Le demaundaunt tende d'averer q'il est tenaunt de sa demaunde. Pendant l'averement le demaundaunt ouste le tenaunt. Le tenaunt porte l'assise.

(2) Un homme ad issue ij filles, il devye, il entrent, et fount la purpartie entre eux. La eynesce est empledé de sa purpartie, qe prie eide de sa parcenere et puys perd et ad la moieté de la terre sa parcenere. Vynt un a qi la punesce avoit chargé avant le recoverir, et destreint.

(3) Un homme est disseisi de commune appurtenant a son fraunc tenement. Il ad issue deux filles. L'une relest vivant son pere ove garrauntie. Puys le piere devie. Les deux seors entrent en la terre et portent le *quod permittat.*

(4) Un homme ad issue deux fiz ; son fiz eigné luy lest une carué de terre a terme de sa vie. Il la aliena en fee. Son fiz eigné porta bref foundu sur statut vers le feffé qe voucha a garraunt le pere celuy qe porta le bref, qe entra en la garrauntie et rent al demaundaunt sa demaunde com celuy qe rien n'ad. Pus le pere disseisi son eigné fitz de meisme la carué de terre et devye. Son fiz eigné esteant dela la mere, le puisne entra com heir apparaunt, devers qi celuy qe voucha le pere recoevri par le *scire facias.* Le fiz eigné revynt en pais et porta bref d'entré sour disseisine.

(5) Yl y ad seignur meen et tenant. Le meen tient par service de chivaler. Le tenant en demene est frere le meen et tient de luy en socage. Le tenant en socage devye ; son fiz deynz age. Le proscheyn parent etc. seisi la garde. Le meen devie saunz heir de son corps. Le chief seignur porta bref de garde del corps vers le proscheyn amy l'enfant.

(6) Un enfant deynz age aliene son droit en fee, reprent estat a luy et a sa femme en fee taillé durant soun nounage, et cel estat continue et devie de pleynage issint q'il n'y ad pas issu entre eux. Son frere porta bref *dum fuit infra etatem* devers la femme etc.

(7) Jeo face une reconissaunce a vous en x livres a paier a certeyn jour. Avant le jour jeo charge la terre a un B. ; puys le jour encoru

[1] The following ten notes occur in *B* only.

38. SPECIAL CASES.

(1) A writ is brought against a man who disclaims the tenancy. The demandant offers to aver that the man is tenant of what he demands. While the averment is pending, the demandant ousts the tenant. The tenant brings the assize.

(2) A man has issue two daughters. He dies. The daughters enter on his lands and make partition between them. The elder is impleaded of her share, and prays aid of her parcener. She then loses and has a moiety of the land of her parcener. A man to whom the younger sister had charged her land before the recovery comes and distrains.

(3) A man is disseised of common appurtenant to his frank tenement. He has issue two daughters. One releases in the lifetime of her father with a warranty. Then the father dies. The two sisters enter on the land and bring the *quod permittat.*

(4) A man has issue two sons ; his elder son leases to him a ploughland for the term of his life. He alienated it in fee. His elder son brought a writ founded on the statute[1] against the feoffee who vouched to warranty the father of the man who brought the writ. The father entered into the warranty and rendered to the demandant his demand as he who has nothing. Then the father disseised his elder son of the same ploughland and died. The elder son being beyond the sea, the younger entered as heir apparent ; and against him the man who had vouched the father recovered by the *scire facias.* The elder son returned and brought a writ of entry *sur disseisin.*

(5) There are a lord, a mesne and a tenant. The mesne holds by knight's service ; the tenant in demesne is the brother of the mesne and holds of him in socage. The tenant in socage dies, and his son is within age. His next kinsman etc. seizes the wardship. The mesne dies without an heir of his body. The chief lord brought a writ of wardship of the body against the next friend of the infant.

(6) An infant within age alienates his right in fee, and takes back an estate to himself and his wife in fee tail while still within age. He continues that estate and dies seised and of full age without there having been issue between them. His brother brought a writ of *dum fuit infra etatem* against the wife etc.

(7) I make a recognizance to you to pay ten pounds on a certain day. Before the day I charge my land to one B. Then on the day you

[1] Stat. Westm. II. c. 25.

vous siwez le *elegit* et avetz la moigté de ma terre. B. destreynt, vous fetes la replevyne ; il porte l'assise.

(8) Yl y ad seignur meen et tenant. Le seignur ad issue deux filles. La eygnesse purchace les services le meen et attourne a son pere et il devie seisi des services. Le tenant en demene port bref de *Meen* vers l'eigné seor si q'ele est forjuggé et attourne a chief seignur *scil.* a la punesce. L'eigné porte le *Nuper Obiit* vers la punesce etc.

(9) Yl y ad seignur meen et tenant. Le meen ad issue deux filles. L'eigné fille purchace le demene vivaunt son pere ; pus son pere devye. La punesce fet felonie et est atteynte. Le chief seignur destreint l'eigné pur l'entier de services.

(10) Un *precipe quod reddat* est porté vers moy d'un manoir, al quel les services de fraunctenementz sount regardaunt. Pendaunt le bref un tenant devie, son heir deynz age. Jeo aliene la garde de la terre. Pus le manoir est recoveré devers moy. Celui a qi jeo alienay la garde est enjetté par celui qe recoveri. Il porte bref d'enjettement de garde etc.

39. SHORT CASES AND MISCELLANEOUS NOTES FROM VARIOUS MANUSCRIPTS.

(1) *Nota.*[1] Bref de wast fut porté vers un homme et sa femme qe plederunt et disoient qe nul wast fet etc. Le revers [2] fut trové devant viscount etc. Retourné en baunc a certeyn jour. A quel jour le baroun fit defaute. La femme vint et pria estre resceu etc.

Malm. Resceu ne devez estre, care statut veot qe la ou le baroun veot perdre ou rendre de gree etc. mès ore sunt lez tenementz perduz par verdit d'enqueste et nent par defaute, ne par rendre. Et issy nent en cas de statut. Et demaundoms jugement. Et *hoc non obstante* ele fut resceu par *Berr.*

(2) Un [3] bref d'entré fut porté vers un homme e sa femme e dit ' en le quex ele n'ad entré si non par R.'

[1] From *C* (fol. 110 v°) collated with *Q* (fol. 32 v°) and *T*. [2] respouns *Q*.
[3] From *D* (fol. 46 r°) collated with *P* (fol. 66 v°).

sue the *elegit* and have the moiety of my land. B. distrains, you replevy; then he brings the assize.

(8) There are a lord, a mesne and a tenant. The lord has issue two daughters. The elder daughter purchases the services of the mesne [1] and attorns to her father; and the father dies seised of her services. The tenant in demesne brings the writ of mesne against the elder sister, so that she is barred; and he attorns to the chief lord that is to say the younger sister. The elder sister brings the *nuper obiit* against the younger etc.

(9) There are a lord, a mesne and a tenant. The mesne has issue two daughters. The elder daughter purchases the demesne in the lifetime of her father, then her father dies. The younger daughter commits felony and is attainted. The chief lord distrains the elder daughter for the entirety of the services.

(10) A *precipe quod reddat* is brought against me of a manor to which the services of frank tenements belong. While the writ is pending a tenant dies, his heir being within age. I alienate the wardship of his land. Then the manor is recovered in the action against me. He to whom I have alienated the wardship is ejected by him who recovers. He then brings the writ of ejectment of wardship etc.

39. SHORT CASES AND MISCELLANEOUS NOTES FROM VARIOUS MANUSCRIPTS.

(1) *Note.* A writ of waste was brought against a man and his wife who pleaded and said that no waste had been made etc. The contrary was found before the sheriff etc. The verdict was returned into the bench on a certain day. At that day the husband made default. The woman came and prayed to be received etc.

Malberthorpe. Received you ought not to be; for the statute[2] says that where the husband wishes to 'lose or render voluntarily etc.'; but now the tenements are lost by the verdict of the inquest, and neither by default nor by render. And so she is not in the case of the statute. We ask judgment. This notwithstanding she was received by Bereford C.J.

(2) A writ of entry was brought against a man and his wife which said 'into which she has not entry save by R.'

[1] Apparently the services are those due by the tenant in demesne to the mesne.
[2] Stat. Westm. II. c. 3.

Byng. Il suppose par son bref q'ele fu seisi soule, e[1] vous dioms qe ele entra après la morte Richard com fille e heir pus l'esposails, issi qe durant la coverture ele ne pout soule entrer.[2] Jugement.

Ber. Vous avetz affermé soun bref qe c'est l'entré la femme en tiel cas la ou ele entre en son heritage durant la coverture ; et en dreit de ceo le bref est assez bon etc.

(3) Une[3] quiteclemance fu[4] mis avant en barre la ou le tenant fist defaute après defaute. E fu chacé a respondre[5] a[6] la quiteclamance sanz dire qe la quiteclamance fut faite devant la defaute ou après la defaute.

(4) En[7] un bref de waste.

Ing. A cesti bref ne devez estre resceu q'il nous lessa le maner a terme de nostre vie ovesqe les appurtenaunces et ovesqe touz maneres des profitz de comoditez a mesme le maner regardauntz par ceo fet etc. Jugement etc.

Berr. Il vous lessa le maner ove touz maners de comoditez a fere vostre profit et a prendre vostre profit. Pur ceo n'ad il mye graunté qe vous devez fere waste, qe cele parole ne soune mye en desheriteson, mès wast soune en desheritesoun et damage et grant prejudice a celi a qi la reversioun appent, dont coment q'il graunte les comoditez a prendre profit et pur ceo ensuyt il mye qe vous peussez fere waste. Par quei nous agardoms qe vous respoignez al waste.

Ing. Nul waste fet. Prest etc.

Et alii e contra.

(5) En[8] un bref de ael la descente fut de Thomas a Robert, de Robert a Johan qe etc.

Le tenaunt. Robert par my qi il ad counté fut bastard. Prest etc. Jugement etc.

Le demaundaunt. Muluré. Prest etc.

(6) Un[9] bref de waste fut porté vers un homme et sa femme et plederent al enqueste et l'enqueste pris en pays de visnée ; et trové fut q'il avoint fet waste ; le verdit del enqueste retourné en bank, a quel jour le baron fit defaute. Sa femme vint avaunt jugement etc. et pria etc. Et fut joint autrefietz en enqueste etc.

[1] la *P.* [2] *Ins.* e demaundoms *P.* [3] From *D* (fol. 46 r°) collated with *P* (fol. 66 v°). [4] *Ins.* porté et *P.* [5] conustre *P.* [6] *Om.* a *P.* [7] From *M* (fol. 40 r°). [8] From *M* (fol. 40 v°). A similar note occurs in *T* among the reports of Michaelmas Term, 5 Edw. II. [9] From *M* (fol. 40 v°).

Bingham. He supposes by his writ that she was solely seised, and we tell you that she entered after the death of Richard as daughter and heiress after her marriage, so that during her coverture she could not enter solely. We ask judgment.

Bereford C.J. You have affirmed his writ ; for this is the entry of the wife, in a case such as this, where she enters upon her inheritance during the coverture ; and in regard to this point the writ is good enough etc.

(3) A quitclaim was put forward as a bar ; and the tenant made default after default ; and the demandant was driven to answer the quitclaim without any statement that the quitclaim was made before or after the default.

(4) A[1] writ of waste.

Hengham. On this writ you ought not to be received for the demandant leased to us by this deed etc. the manor for the term of our life with the appurtenances and with all kinds of profits from the commodities to the same manor belonging. Judgment etc.

Bereford C.J. He leased to you the manor with all kinds of commodities therein for you to make and take your profit. By this he has not granted that you could make waste, for that word profit has no suggestion of disinheritance; but the word waste has a suggestion of disinheritance and damage and things greatly prejudicial to him to whom the reversion belongs. Therefore though he may grant the commodities for you to take your profit, it does not follow from that that you may make waste. Therefore we award that you answer to this writ of waste.

Hengham. No waste made. Ready etc.

And the others to the contrary.

(5) In a writ of ael the descent was made from Thomas to Robert, and from Robert to John who now etc.

The tenant. Robert through whom he has counted was a bastard. Ready etc. Judgment etc.

The demandant. Legitimate. Ready etc.

(6) A[2] writ of waste was brought against a man and his wife; and they pleaded to the inquest, which was taken in the neighbourhood of the land. It was found that they had made waste. The verdict of the inquest was returned into the Bench, and at the day of the return the husband made default. His wife came before judgment etc. and prayed etc. And she was again joined in the inquest etc.

[1] This is a brief report of *Alet* v. *Nausladron*, see p. 150 above.

[2] This is another version of Case 1 on p. 155.

Celi qe pria d'estre resceu et defendre etc. fut essoné. Et dicunt quidam qe celi q'est somoné en chescun maner de bref si put il estre essoné en cas la ou il put estre porté en plee com en garraunt voucher prier eide et en autre manere.

(7) Un[1] tenaunt en play de terre vouche a garraunt ij parceners. L'un fit defaute etc. Le graunt *Cape* issit pur prendre a la value de la demaunde enterement etc. et par la defaute l'un des parceners. Et mirum est qe l'entere serra pris, qar le demaundaunt ne recovre forsqe la moyté de cele defaute.

(8) Un[2] Adam porta bref de forme de doun. Et fut le bref tiel. 'C. dedit Roberto de P. et uxori eius et heredibus de predictis R. et P. exeuntibus et que post mortem predictorum R. et P. [et W. filii et heredis etc. et] W. fratris et heredis predicti W. prefato Willelmo fratri et heredi predicti W. descendere debet.'

Herle. Jugement de bref, qe ne se fet mye fitz a ceux a qi le doun se fit.

Denom. Nous avoms lié la descente de Robert de P. a R. com a fitz de R. a Willem com a frere de W. a Willem com a frere etc. et issi assez privé a cest forme en ceo, nous avom nul tiel bref en la chauncellerie.

Herle. Le bref prove ly mesme malveys, qe il fet Willem frere et heir Willem, auxi com Willem fut celi qe fut partie au doun etc. Jugement de bref.

(9) Un[3] Adam se pleint qe un B. atort prist ses avers.

Herle avowa la prise bon par la resoun qe un H. tent un bové de terre par certein services *nominando* services et des queux services etc. De B. descendi le dreit a R. de R. a B. Et pur taunt arrere si avowe il etc.

Pass. Vous estes seisi des services par my nostre mayn et vous nous avez resceu com tenaunt. Jugement si sur autre qe sur nous pusse etc.

Herle. Coment estes vous avenuz, il vous covent dire, einz ceo qe vous pussez nous estraunger de nostre verrei tenaunt.

Scrop. De pus qe vous nous avez resceu com vostre verrei tenaunt et seisi estes par my nostre mayn, jugement etc.

[1] From *M* (fol. 41 v°). [2] From *M* (fol. 41 v°). This is another report of *Montfort* v. *Tregoz.* (See p. 59 above.) Most of the initials representing Christian names are wrongly given in this MS. The names which they should represent are given in the translation in accordance with the Record from which the words in brackets are also supplied. [3] From *M* (fol. 41 v°). This is a brief report of *Compton* v. *Haulay*, see p. 113 above.

He who prayed to be received and defend etc. was essoined. And some say that he who is summoned on any kind of writ can be essoined, [as] in a case where he can be brought into a plea as in voucher to warranty, prayer in aid and in any other way.

(7) A tenant in a plea of land vouched to warranty two parceners. One made default etc. The Grand *Cape* issued to take to the value of the entire demand etc.; and this on the default of one of the parceners. It is remarkable that the entirety should be taken, for the demandant recovers a moiety only on this default.

(8) One [Robert] brought a writ of formedon; and the writ was as follows: C. gave to Robert and P. his wife and the heirs of the aforesaid Robert and P. issuing and which after the death of the aforesaid Robert and P. and Walter the son and heir etc. and William the brother and heir of the aforesaid Walter to the aforesaid [Robert] the brother and heir of the aforesaid William ought to descend.

Herle. Judgment of the writ, for he does not make himself son to those to whom the gift is made.

Denham. We have laid the descent from Robert and P. to [Walter] as son, and from [Walter] to William as brother, and from William to [Robert] as brother etc., and so Robert is sufficiently privy for this form. As to this we have no such writ in chancery.

Herle. The writ proves itself to be bad, for it makes [Robert] the brother and heir of William, as if William were he who was a party to the gift etc. We ask judgment of the writ.

(9) One Adam complained that one B. had wrongfully taken his beasts.

Herle avowed the taking as good, for the reason that one H. held a bovate of land by certain services (and he named the services), and of which services [one B.] etc. From B. descended the right to R., from R. to B. And for so much in arrear he avows etc.

Pass. You are seised of the services by our hand and you have received us as your tenant. Judgment whether you can avow etc. upon another than us.

Herle. You must say how you have come [to be our tenant] before you can estrange us from our very tenant.

Scrope. Since you have received us as your very tenant and are seised by our hand, we ask judgment etc.

Toud. Forme de ley serreit a moustrer et dire qe vous estes avenuz, par successioun etc. ou par purchaz, et issint vous fere privé.

Ber. Il n'est pas mester s'il die verité qe l'avowere entrer' vous,[1] si vous ly eyez resceu.

(10) Un[2] [A.] porta l'attachement sur la prohibicioun vers le evesqe et le official et counterent q'il avoint suwy play devaunt eux mesme encountre la prohibicioun.

Malm. aveit dit estre[3] naturelement devaunt autres qe celi qe suyt; et il ount counté qe nous avoms suwy play devaunt nous mesme. Jugement de counte.

Ber. Il suwent play a la sute de officiel et fount somondre les gentz devaunt eux et sount mesme juges et issint suwent il le ple et tenent le ple. Et d'autrepart le roy est partie a ceo bref, par quei nous ne abateroms mye ceo bref, mès le bref serroit meillour 'quod tenent placitum.'

Malb. pur l'evesqe tendit l'averrement et pur les autres tendi la ley. (Et fut resceu.)

(11) *Lauf.*[4] C'est la pees a voz congez. A. conust x soudez de rente et la quarte partie de un fee de chivaler contenuz en le bref ensemblement ove le homage et les services Geffray de C. par les queux l'avauntdite G. tent de ly estre le dreit C. et ceo ly graunte en ceste chartre a aver et tenir de chiefes etc. par les services qe a tenementz appendunt a touz jours sanz plus. Et fut la fyn levé sur bref de covenant qe fut tiel:—'Precipe A. quod iuste etc. teneat C. conuencionem etc. de decem solidatis redditus et quartam partem feodi unius militis' sanz plus etc.

(12) Un bref d'entré porté vers deuz joyntement fut abatu pur ceo qe l'un des tenauntz fut mort etc.

(13) Si un homme seit prié en eyde et eit somouns et ne vint pas, il ne serra pas resceu après par la defaute le tenaunt; mès son heir ne serra par resoun[5] taunt barré, q'il ne serra resceu.

(14)' *Nota*,[6] qe la ou iiij chivalers vignent en court eslire la graunt assise. Parties dirront chalenges devaunt les iiij chivalers qe devaunt eux serrount triez, qe après qe eux ount eslu et l'assise en baunke maundé nule chalenge est receyvable—par *Ber.*

[1] The text is corrupt. [2] From *M* (fol. 42 r°). [3] The text is corrupt here. Probably several words are omitted. The word printed as 'estre' might be read as 'estes.' [4] This and the two following notes are from *M* (fol. 44 r°). [5] There is probably an omission here. [6] From *P* (fol. 64 r°).

Toudeby. The right course in law would be for you to show and say how you have come to be tenant, by succession etc. or by purchase, and so make yourselves privy to us.

Bereford C.J. There is no need, if he speaks the truth, for the avowry will estrange you if you have received him.[1]

(10)[2] One A. brought the attachment upon the prohibition against the bishop and the official, and he counted that they had sued a plea before themselves against the prohibition.

Malberthorpe. This plea ought in ordinary course[3] to be brought before others than those who sue, and they have counted that we have sued a plea before ourselves. Judgment of the count.

Bereford C.J. They sue a plea at the suit of the official and they cause the people to be summoned before themselves and they are themselves the judges, and so they sue the plea and they hold the plea; and besides the king is party to this writ. Therefore we will not abate this writ; but the writ would be better, thus:—'that they hold the plea.'

Malberthorpe for the bishop tendered the averment and for the others tendered their law. (And he was received to do this.)

(11) *Laufare.* This is the peace by your leave. A. acknowledges ten shillings a year of rent and the fourth part of a knight's fee, contained in the writ, together with the homage and services of Geoffrey de C. by which the aforesaid G. holds of him to be the right of C.; and this has he granted to him in this charter to have and to hold of the chief lords etc. by the services which to these tenements belong for ever—without more. And the fine was levied upon a writ of covenant which was as follows:—Command A. that justly etc. he hold to C. the covenant etc. of ten shillings a year of rent and the fourth part of a knight's fee—without more etc.

(12) A writ of entry brought against two joint tenants was abated, because one of the tenants was dead etc.

(13) If[4] a man be prayed in aid, and he be summoned and comes not, he will not be received afterwards on the default of the tenant; but his heir will not be thereby barred from being received.

(14) *Note.* Let the four knights come into court and choose the grand assize. The parties will make their challenges before the four knights and they will be tried before them; for after the [twelve] knights have been chosen and the assize sent into the Bench no challenge can be received.—By Bereford C.J.

[1] The translation is conjectural.

[2] This is *Clerbek* v. *Lincoln*, a case of Hilary term 4 Edw. II. See vol. vi. p. 97.

[3] See note 3 opposite.

[4] This refers to case 18 on p. 63 above.

(15) Un [1] bref de deceyte fut porté sur le *monstrauit de compoto,* ou fut trové qe celi sur qi le *monstrauit* fut porté out terrez et tenementz. E pur ceo qe ayvs fut a la court qe noun pas suffisaunt nomement ix darrés de rente, le quel ne fut pas suffisaunt de amener ly al acounte de xx livres, fut agardé q'il prit rien etc.

(16) A[2] un jour del petit *cape* retourné, le tenant mist avant quite-cleimaunce et dit ele fut fet par le demaundaunt[3] jugement si encountre son fet demene etc. Le demaundant demaunda l'oye du fet. Il n'y avoit date. Et pus dit q'ele ne fut pas pus la defaute.

Henr. Conissez le fet adeprimes ou dedites le.

Ing. Nous n'avoms pas mestier del hure qe nous voloms averrer q'ele ne fut pas fet pus la defaute.

(17) *Nota*[4] qe un A. porta sun bref de dowere vers B. B. voucha a garant Johan fiz mesme cele Alice par le fet son pere.

Hengham. Volez garaunter ?

Johan. Sire, jeo n'ay nul terre en ma mein de par mon pere, qar il ad lessé a terme de x anz avant sa mort.

Denham. Sire, la place fust desherbergé quant sun baron le vendit, e ele quide rescoverir la value des mesons qe ore sunt fetes en la place.

Bereford. Quidez vous dame, si vostre baroun me eust vendu une voide place e jeo eusse edefié une chastel, quidez vous a rescoverir la terce partie de mon chastel ? (*quasi diceret,* Non). Et pur ceo agard ceste court q'ele rescovere a la value de la place *tantum* qe le valut quant sun baroun le aliena etc.

(18) *Nota*[5] ou Water le Taverner se obligea a H. in x livres s'il ne veint a certein jour etc. a lever un fin de un mes ove les apurtenances en C. qe fut del dreit sa femme ; de deinz qel jour la femme morust.

Hervy rehersa tote la parole e dist :—Vater, pur ceo qe[6] vous ne poez dedire qe ceo n'est vostre fet e vous avez conu qe vostre femme est morte, par quei la fin dust estre engrossé, e vostre fyz put aver sa accioun a memes le mes quant il vodra, e il ne serreit mie reson qe H. perdereit ces deners e le mes, si agard la court qe H. recovere vers vous les x livres et ses damages de xl souz et vous en la mercy.

[1] From *P* (fol. 64 v°). [2] From *M* (fol. 40 v°). [3] la desc' *M*. [4] From *Y* (fol. 144 v°). [5] From *Y* (fol. 244 v°). [6] *Om.* qe *Y*.

(15) A writ of deceit was brought upon the *monstrauit de compoto* and it was found that he upon whom the *monstrauit* was brought had lands and tenements. And because the court was of opinion that this—namely ninepence a year of rent, which was not sufficient to bring him to account for twenty pounds—was not sufficient, it was awarded that the plaintiff take nothing etc.

(16) On the day of the return of the little *cape* the tenant put forward a quitclaim and said that it was made by the demandant. He asked judgment if against his own deed etc. The demandant asked for oyer of the deed. There was no date. Then he said that it was not made after the default.

Stanton J. Acknowledge the deed first or deny it.

Ingham. We have no need, since we wish to aver that it was not made after the default.

(17) *Note.* One A. brought her writ of dower against B. who vouched to warranty John the son of this same Alice by the deed of his father.

Hengham. Will you warrant?

John. Sir, I have no land in hand from my father, for before his death he leased it for a term of ten years.

Denham. Sir, the place was without shelter, when her husband sold it, and she thinks that she will recover the value of the houses which are now standing thereon.

Bereford C.J. Do you think, madam, that if your husband had sold me an empty place, and I built a castle on it, you would recover a third part of my castle? (*as if to say* You would not). Therefore this court awards that the lady recover to the value only of the place as it was when her husband alienated it etc.

(18) *Note.* Walter the Taverner bound himself to H. in ten pounds if he did not come on a certain day etc. to levy a fine of one messuage with the appurtenances in C. which was the right of his wife; and before that day the woman died.

Stanton J. rehearsed the whole cause, and said 'Walter, as you cannot deny that this is your deed, and you have acknowledged that your wife is dead, therefore the fine ought to be engrossed, [but] your son can have his action to [recover] the same messuage when he wishes. And it would not be right that H. should lose both his money and the messuage, so the court awards that H. recover against you the ten pounds, and his damages of forty shillings, and that you be in mercy.'

CASES[1] FROM FITZHERBERT'S ABRIDGEMENT ATTRIBUTED TO 4 EDW. II.

1.[2] T. fitz C. port *nuper obiit* vers P. et demaunda le moité de xl acrez en R. et W., et counta que R. son aile fuit seisi dell entiere en fee et de R. discende al C. et E. come a fitez et heirez pour ceo que les terrez fuerent departablez. De C. discende a cesty T. ore demandaunt et de E. discende etc. a cesty P. que ore tient tout.

Stone. S. nostre auncestre morust seisi de mesmez lez terrez en fee et nous enterames come heire et sumus deinz age et priomus nostre age, quar vous demaundez de seisin R. et nous diomus que sumus entré après le mort S. issint demaundez vous de pluis haut que de seisin S. Par que

Heruy. Il vous conust cohere ove luy, par que ditz auter chose.

Stone. R. de que issue[3] il demaunde cy fuit seisi dez auterz terrez en son demene come de fee en R. et W. et M. et N. et il ne demaunde le pourpartie forsque en R. et W. Jugement de briefe.

Heruy. Ditz auterz chose.

Stone. Le demaundant est mesme seisi dez terrez que fuerent del heritage R. en M. et N. Jugement de briefe que suppose que il n'eit rienz.

Pass. S'il voile abatre nostre briefe vous covient dire que nous sumus seisi de part etc. en mesme le vile ou que vous dirrez que nous sumus seisi aillours en allouaunce de etc.; qar cest briefe et briefe de dowere *unde nichil habet* sont d'un mesme nature; et en ceo briefe n'est respouns s'il ne dit que il est seisi de parcel de terrez etc. en mesme le ville, et si mon auncestre morust seisi de tenementz en xx vilez jeo avera *nuper obiit* en chescun vile, si jeo n'ay ma pourpartie en mesme le vile.

[1] Some of the following entries which could not be identified with any of the cases printed in this volume or in Volume VI of this Series have since they were here set up in type been found to relate to cases heard in the Eyre of Kent of 6 Edw. II. The text is from the earliest edition in Lincoln's Inn Library, the last volume of which was published in 1516; but as that edition is exceedingly scarce the references are here given to the later edition published in 1565. [2] Book I, fol. 24v°, Age, No. 137. See also *Eyre of Kent*, iii. 147. [3] An error for 'seisin.'

CASES FROM FITZHERBERT'S ABRIDGEMENT ATTRIBUTED TO 4 EDW. II.

1. T. the son of C. brought the *nuper obiit* against P. and demanded the moiety of forty acres in R. and W. and counted that R. his grandfather was seised of the entirety in fee, and from R. the lands descended to C. and E. as sons and heirs, because the lands were partible. From C. descended his share to this T. who now demands, and from E. descended etc. to this P. who now holds all.

Stonore. S. our ancestor died seised of the same lands in fee, and we entered as heir, and we are within age; and we pray our age. For you demand on the seisin of R.; and we say that we entered after the death of S. so that you demand on a higher title than the seisin of S. Whereupon,

Stanton J. He acknowledges that you are co-heir with him, so say something else.

Stonore. R. on whose seisin[1] he demands was seised of other lands in his demesne as of fee in R. and W. and in M. and N.; and he demands his share in R. and W. only. We ask judgment of the writ.

Stanton J. Say something else.

Stonore. The demandant is himself seised of the lands which were of the inheritance of R. in M. and N. Judgment of the writ, which supposes that he has nothing.

Passeley. If you wish to abate our writ, you must say that we are seised of part etc. in the same vill, or you should say that we are seised elsewhere in allowance of etc.; for this writ and the writ of dower *unde nichil habet* are of one and the same nature. In that writ it is no answer if he does not say that he is seised of parcel of the lands etc. in the same vill. And if my ancestor died seised of tenements in twenty vills, I should have a *nuper obiit* in each vill, if I have not my share in the same vill.

[1] See note 3 opposite.

Spigurnel (Justice). Vostre maxime n'est bone, qar si vous soiez enpledé de lez terrez que vous tenez del heritage R. le comen auncestre vous averez aide come dez terrez tenuz en coparcenere. Coment poiez dounque demaunder pourpartie come cesty que rienz n'ad ?

Hervy (Justice). Briefe de dowere *unde nichil habet* et cest briefe solent estre d'un mesme nature ; et l'un briefe et l'auter pourront estre abatu par excepcioun de seisin de partie ; mèz ore en briefe de dowere le excepcion restreint par l'estatut. Mèz en cest case le excepcioun tient come avaunt ; par que respondez.

Pass. Ne poiomus dediere que nous ne sumus seisi de partie en M. et en N.

Hervy. Par que agarde cest court que vous ne preignez rienz par vostre briefe etc.

Vide title Admesuerment 7 E. 2.[1]

2. *Nota,*[2] par *Hervy* et *Spegurnell* justices, que home n'avera assise de comen vers cesty que luy distourbe solement sauns nosme le tenaunt del soyl ; ne home n'avera assise del garde del graunde port de mansion de palez l'ercevesque de C. sauns nosme l'archevesque en le briefe que est tenaunt del soyle etc.

3.[3] Assise de rente. Le tenaunt plede hors de son fee, et le pleintif fist tytle al rent.

Hervy. Faytz cause del disseisin.

Malam. Reteignement del rent et counterpleder sount assez cause de disseisin.

Hervy. Vous dirrez auter cause si voillez aver l'assise.

Stone. Nous distreinimes le tenaunt et il suit *replegiari* etc.

Vide 40 E. avaunt de ceo, 29 E. libro assisarum.[4]

4.[5] *Nota* : quant home ceo pleint estre disseisi de cez resonable estovers il ne dirra mye en sa pleynte de un profitt apprendre ; mèz le pleynt serra tile, de resonable estovers etc. aprendre, fetessaver, housebote haybote de novel meason a edefiere et veile reparelere et d'enclose et arere[6] en chamber sale, et cusin bracine pystrine, de aver en an en x acres de boyse par vieu de forester ou sauns vieu. Et si le cas soit tile, a sa meson de tyel vylle appurtenance.

[1] Book I, fol. 17 v°, No. 13. [2] Book I, fol. 90 v°, Assise, No. 449. See also *Eyre of Kent*, iii. 128. [3] Book I, fol. 90 v°, Assise, No. 450. See also *Eyre of Kent*, iii. 128. [4] *Year Book*, Easter, 40 Edw. III, fol. 24 r°, No. 25, and (apparently) *Book of Assises*, fol. 239, No. 3, and fol. 167, No. 52. [5] Book I, fol. 90 v°, Assise, No. 451. See also *Eyre of Kent*, iii. 125. [6] Probably an error for 'ardere.'

Spigurnel J. Your maxim is not good, for if you were impleaded of the lands which you hold of the inheritance of R. the common ancestor you would have aid as tenant of lands held in coparcenery. How then can you demand a share as one who has nothing?

Stanton J. The writ of dower *unde nichil habet* and this writ were taken to be as of one and the same nature and both writs could be abated by the exception of 'seisin of part.' But now in the writ of dower the exception is qualified by statute,[1] but in this case the exception holds good as before. Therefore answer.

Passeley. We cannot deny that we are seised of part in M. and N.

Stanton J. Therefore the court awards that you take nothing by your writ etc.

See the title Admeasurement 7 Edw. II.

2. *Note* by Stanton and Spigurnel Justices that a man will not have the assize of common against him only who disturbs him without naming the tenant of the soil, nor will a man have an assize of the keepership of the great gate of the mansion of the palace of the archbishop of Canterbury without naming in the writ the archbishop who is tenant of the soil etc.

3. Assize of rent. The tenant pleads 'outside his fee' and the plaintiff makes a title to the rent.

Stanton J. State the cause of the disseisin.

Malberthorpe. Withholding the rent and counterpleading are a sufficient cause of disseisin.

Stanton J. You must say something else if you wish to have the assize.

Stonore. We distrained the tenant and he sued a *replegiari* etc.

See 40 Edw. III above of this, and 29 Edw. III in the Book of Assizes.

4. *Note.* When a man complains that he is disseised of his lawful estovers he will not speak in his plaint of taking a profit; but the plaint will be thus: of lawful estovers etc. to be taken, to wit to have housebote haybote for building a new house or repairing and enclosing an old one; and for burning in a chamber hall kitchen brewhouse bakehouse year by year in ten acres of wood by view of the forester or without view, if such be the case, as appurtenant to his house in such and such a vill.

[1] Stat. Westminster I. 3 Edw. I. c. 49.

5.[1] *Nota.* Sy comen moy soit graunté par especialté pur bestis etc., jeo purra user le comen quant jeo voylle saùns liveré—par *Pass.*, *Malam.*

Et *West.* Et[2] dit que il vyst en tiel case ou trové fuit que le pleintif ne fuit unqes seisi etc. Et l'auter jour il chase einz sez bestz et fuit distourbé ; et porta l'assise et recovera etc.

6.[3] *Nota.* Si home recovere par assise de novel disseisin par faux verdit et fait feffement del parcel del terre a un estraunge, cesty que perd puit aver atteynt vers cesty que recovere soul sauns nosme l'auter que est tenant del parcel en severalté. Ajugé par tout le court. Et par cel recoverer en l'atteint il recovera vers cesty ceo que il tient et nient pluis.

7.[4] Precipe quod reddat unam acram et pasturam ad unum bouem.

Caunt. Le briefe voit que nous rendomus pasture.

Mich.[5] Ou pasture ne chiet en demene etc. Jugement de briefe.

Huy. Si vous soyes tenaunt del soylle, le briefe ne vaut rienz qar la girreit le *quod permittat.* Si non, le briefe est bon pour riens que est uncore dit. Par que respones.

Caunt. demaunda le view ; *et habuit etc.*

8.[6] *Cui in uita* ' quod reddat pasturam ad duas boues ' fuit porté vers autre que vers le tenaunt del soyl, et fuit agardé bone. Et pus le tenaunt fist defaute et petit *cape* agardé.

Wescot. Nous veyomus *Precipe quod reddat* passagium ultra aquam etc. ou fuit demaundé a que le cours del ewe fuit. Et fuit trové a cesty vers que le brefe fuit porté ; par que le brefe sa abatre[7] pour ceo que il puit aver ewe le *quod parmyttat etc.*

9.[8] Brefe d'entré suppose que le tenaunt n'ad entré si non par un B. a que un A. ceo dimisa qui idem tenuit per legem Anglie.

Fris. Si le tenaunt par ley d'Engleterre lesse a terme de sa vie démene, ceo ne done pas alle demaundaunt accioun par tiel brefe,

[1] Book I, fol. 90 v°, Assise, No. 452. See also *Eyre of Kent*, ii. 3. [2] This word is intrusive. [3] Book I, fol. 95 v°, Atteynt, No. 67. See also *Eyre of Kent*, i. 159. [4] Book I, fol. 185 r°, Briefe, No. 792. See also *Eyre of Kent*, ii. 130. [5] This word, which appears to be intended for *Migg*, the abbreviated form of *Miggeley*, is intrusive. [6] Book I, fol. 185 r°, Briefe, No. 793. This seems to refer to the same case as the preceding note. [7] *Sic.* [8] Book I, fol. 185 r°, Briefe, No. 794. See also *Eyre of Kent*, ii. 94.

5. *Note.* If common be granted to me by specialty for beasts etc. I can use the common when I will without livery :—(by *Passeley* and *Malberthorpe*).

Westcote said that he had seen such a case where it was found that the plaintiff was never seised etc. And on another day he drove in his beasts, and was disturbed. He brought the assize and recovered etc.

6. *Note.* If a man recover on an assize of novel disseisin by a false verdict and make a feoffment of parcel of the land to a stranger, he who has lost can have an attaint against him who has recovered alone without naming the other man who is tenant of the parcel in severalty. This was adjudged by the whole court. And by this recovery on the attaint he will recover against him what he holds and no more.

7. *Precipe quod reddat* of one acre and pasture for one ox.

Cambridge. The writ says that we are to render 'pasture'; but[1] pasture does not lie in demesne etc. Judgment of the writ.

Stanton J. If you are tenant of the soil the writ is worth nothing; for in that case the *quod permittat* would lie. If not, the writ is good for anything which has been said yet. Therefore answer.

Cambridge asked for view (and he had it etc.).

8. A *cui in uita* 'that he render pasture for two oxen' was brought against another than the tenant of the soil and the writ was awarded good; and then the tenant made default, and the little *Cape* was awarded.

Westcote. We have seen a *precipe quod reddat* demanding a ferry across the water of etc.; and it was asked to whom the course of the water belonged. It was found that it belonged to him against whom the writ was brought; whereupon the writ was abated, because the demandant could have had the *quod permittat etc.*

9. A writ of entry was brought alleging that the tenant had not entry save by one B. to whom one A. who held by the law of England demised this land.

Friskeney. If the tenant by the law of England lease for a term of his own life, that does not give the demandant an action by this writ;

[1] See note 5 opposite.

einz puit aver le mortdauncestre et le brefe ne fait mencioun que lez tenementez luy devent demurrer après sa mort. Jugement de brefe; qar brefe d'entré ne gyst mès ou le tenaunt par ley d'Engleterre alien en fee, et cest brefe ne fait mencion de ceo.

Spigurnell. S'il eit que[1] recoverer il puit eslire, et cest briefe ad estre[2] usé tout temps en le chauncere, par que nous ne abatroms[3] mie le brefe.

Et le tenaunt demaunde le view. *Et habuit etc.*

10.[4] *Cui in uita.* Et fist title 'quam clamat esse ius de dono W. et B. etc.' Le tenant dit que le demandant n'avoit unques rienz del doun W. Prist.

Stone. Si B. nous done, uncore nostre brefe est bone.

Spig. (Justice). Non, qar poyez aver melior brefe, supposaunt que B. done.

Hert. Nous voillomus averer nostre brefe que W. et B. done etc. Et alii econtra.

11.[5] Dower vers J. gardein del corps C. fitz et heire D. etc. Le defendaunt dit que il n'avera rienz en le garde si non jointe ove sa femme etc. Et le demaundant ne puit ceo dedire, par que le bref s'abatre etc.

Vide octauo Edwardi tercii [6] avant de ceo; et en title de champartie P. 47 E. 3 etc.[7]

12.[8] Si home endité de felonie eit femme enherité, le roy avera lez issuz del terre le femme en tempz que il est in preson auxi avant com de son droit demesne etc. Et en mesme le maner le roy avera lez issuz la ou il est futiff tanqe que il soit mort ou atteint. Et tout eit il chartre le roy après de sa peas, le roy doit estre servy des issuz de le terre en eire en le mesne tempz etc.

13.[9] Nota en assise de novel disseisin *Spig.* ne *Stant.* ne voudrent pas charger l'assise ou le disseisin fuit trové des chateux moveblez

[1] An error for 'ij.' [2] An error for 'esté.' [3] Printed in the Old Editions as 'abatre.' [4] Book I, fol. 185 r°, Briefe, No. 795. [5] Book I, fol. 169 v°, Briefe, No. 796. [6] Book I, fol. 169 v°, Briefe, No. 446; *Year Book*, 8 Edw. III, Hilary, fol. 15. [7] Book I, fol. 198, Briefe, No. 4; *Year Book*, 47 Edw. III, Mich., fol. 9, No. 5. [8] Book I, fol. 258 r°, Corone et plees del corone, No. 374. The same entry also occurs in the next part. See Book II, fol. 21 v°, Forfeture, No. 16. [9] Book I, fol. 261, Damages, No. 10. See also *Eyre of Kent*, iii. 73.

but he can have the mortdancestor, and the writ makes no mention of this that the tenements ought to remain to the demandant after the tenant's death. We ask judgment of the writ; for the writ of entry does not lie save where the tenant by the law of England alienates in fee; and this writ makes no mention of this.

SPIGURNEL J. If he has [two] recoveries, he may make his choice; and this writ has always been used in the chancery. Therefore we will not abate the writ.

The tenant demanded a view; (and he had it etc.).

10. *Cui in uita.* The demandant made his title thus:—which he claims to be his right of the gift of W. and B. etc. The tenant said that the demandant had nothing by the gift of W. Ready etc.

Stonore. If B. made the gift to us, our writ is yet good.

SPIGURNEL J. No, for you can have a better writ, alleging that B. gave.

Hartlepool. We wish to aver our statement in the writ that W. and B. gave to us.

And the others to the contrary.

11. Dower against J. the guardian of the body of C. the son and heir of D. etc. The defendant said that he had nothing in the wardship save jointly with his wife etc. The demandant could not deny this, and therefore the writ abated etc.

See 8 Edw. III. above of this, and in the title Champerty Easter 47 Edw. III. etc.

12. If a man indicted of felony have a wife with an inheritance, the king will have the issues of the land of the wife, while the husband is in prison, as much as of the lands of the husband's own right etc. In the same way where a man is a fugitive the king will have the issues until the man is dead or attainted. And although he may have the king's charter of peace afterwards, the king ought to be provided with the issues of the land in eyre during the same time etc.

13. *Note.* In an assize of novel disseisin neither SPIGURNEL J. nor STANTON J. would charge the assize, where the disseisin had been found

enporté al temps de disseisin a parler ne a mittre les chatelz en damages pur ceo que le pleintif puit aver son recoverer par auter voie. Mèz si arbes fuerent coupés ou enportez, de ceo charge il l'assise que il parlust, quant il taxe damages, quod mirum par statutum de W. ca. 36.[1]

14.[2] Dette sur obligacion. Le defendant dit que il fut livré, en owel mayne a un tiel sur condicion què si le defendant fait tiel chose que l'obligacion serra voide et serra bailé al defendant et il dit que il ad fait cest chose. Et *non allocatur* sans moustre fait del condicion etc.

15.[3] *Disceit* des tenementz recoverez en dowere taunt come le tenant fuit en prison.

Berre. Ne poiez dedire que fuistes somonez solonqe la ley del terre et la terre prise en main le roy ou il n'apparut[4] mye defaire somouns[5] ne examiner les veiours donques brefe de disceit ne gist. Par que agard cest court que vous ne pregnez riens par cest brefe.

16.[6] Dower. Le tenant vouche le heire. Le vouché fist defaute après defaute, par que fuyt agardé que el recovere son dowere vers le heire s'il ad, et de ceo que il failli que el recovere vers le tenant. Et puis le vicount sanz enquest prendre lyvere al femme son dowere del terre le tenant et le tenaunt port l'assise devaunt justicez assignez. Et pour difficulté ajournez en banke. Et pour ceo que il y ad certen proces en banke par que il puit estre aidé ; et chose fait en banke ne doit par assise estre redressé, par que fuit agardé que il ne prist riens par son brefe et prie brefe al viconte de faire execucioun del primer jugement etc.

17.[7] Dowere de terre et rent par une *precipe*. Le tenaunt dit quaunt al terre unques seisie etc. Et fuit chasé de responder oustre al remanant.

[1] This is a wrong reference. Apparently Westm. I, c. 37 is meant. [2] Book I, fol. 280, Dette, No. 169. [3] Book I, fol. 294 v°, Disceit, No. 51. This case is attributed to Mich. 4 Edw. II. It occurs in *B* and *G* in almost the same words at the end of the reports of Easter 4 Edw. II. [4] n'appent *B*, n'apent *G*. [5] somenours *B*. [6] Book I, fol. 297, Disseisin, No. 10. This is the case of *Belle* v. *Scaldeford* heard in Michaelmas term, 4 Edw. II (see *Y.B. Series*, IV. p. 180). [7] Book I, fol. 308, Dower, No. 141. This also is attributed to Michaelmas term of this year.

of movable chattels carried away at the time of the disseisin, to speak of the chattels or to reckon them in the damages, because the plaintiff could have his recovery in another way. But if trees were cut or carried away they would charge the assize that they speak of this when they taxed the damages. This seemed strange in view of the Statute of Westminster, ch. 36.[1]

14. Debt upon a bond. The defendant said that the bond was delivered into neutral custody to a certain person upon condition that if the defendant did a certain thing, then the bond should be void, and be delivered again to the defendant. The defendant said that he had done this thing. This plea was not allowed without his showing the deed with the condition etc.

15. *Deceit* concerning tenements recovered in dower whilst the tenant was in prison.

Bereford C.J. You cannot deny that the tenant was summoned according to the law of the land ; nor that the land was taken into the king's hand, whereupon he made no appearance[2] to undo the summons, nor to examine the viewers. Therefore the writ of deceit does not lie. Therefore this court awards that you take nothing by this writ.

16. Dower. The tenant vouches the heir. The vouchee made default after default, whereupon it was awarded that the woman recover her dower against the heir if he had assets, and that she recover that which he failed to render, against the tenant. Then the sheriff without taking an inquest delivered to the woman her dower out of the land of the tenant. And the tenant brought the assize before the justices assigned. And on account of the difficulty the case was adjourned into the Bench ; and because there was a certain process in the Bench by which he could be aided, and a thing done in the Bench ought not to be redressed by an assize, it was awarded that he take nothing by his writ of assize, and that he pray a writ to the sheriff to execute the first judgment etc.

17. Dower of land and rent was demanded by a single *precipe*. As to the land the tenant said that ' never seised etc.' He was driven to answer further as to the residue.

[1] See note 1 opposite. [2] See note 4 opposite.

18.[1] En dowere est bon respons a dire que le baron et luy purchaserent lez tenementz dount ele demaunde dowere jointement, par que son baron ne fuit unques soule seisi etc.

Vide de dowere bon cas en title de Voucher M. 5 E. 2.

19.[2] Garraunte de chartres. Le defendant vient et dit que il ne puit dedire le garraunte ne que le tenaunt fuit enpledé et aver pardus etc. Par que

Spiggournell. Pour ceo que ne poies dedire la garraunte a cest brefe coment que il soit parsonel come brefe de covenaunt ou home n'est a recover nul terre forsque soulement damages il sert al pleintieffe en lieu de voucher, par que agarde le court que il recovera al value de le terre parduz et ses damages. Et ceo fuit fait par bon avis.

20.[3] *Nota* par Spyg. en mortdauncestre. Si le tenaunt soit essoné et face defaute al jour d'essone il ne serra resomoné, et [4]mez sir[5] l'assise serra prise par son defaute pur ceo qe l'essone est come un defaute ou il n'est garranti etc.

21.[6] En mordauncetur est bon pleder, que un tiel est tenaunt de partye de vostre demaunde, ou jeo n'ay riens si non joyntement etc. et si trové soit etc. vous aves esmé[7] frere etc. de mesme le pere et mere, et pus pleder oustre al accioun etc.

22.[8] Mordauncestre. Le tenaunt dit que les tenementz sont divisablez par testament et le demaundaunt ne puit ceo dedire. Par quei le brefe fuit abatr'[9] sauns alleger en fait que ilz fueront devises etc. pour ceo que puit estre que le brefe est voier etc. et que il morust seisi et uncore le tenaunt puit aver title par le devise etc.

23.[10] *Nuper Obiit.* Le tenaunt dit que l'auncestre de que seisin il demaunde etc. ne morust seisi etc. Et alii econtra etc. Et l'enquest dit que cesti, de qi seisin etc., fuit en peril de mort, et le jour devaunt que il morust; lendemayn cy fuit il encontre son gre emporté par R. son frere et morust hors dez tenementz.

[1] Book I, fol. 308, Dower, No. 142. [2] Book II, fol. 34, Garraunt de Chartres, No. 29; *Eyre of Kent*, ii. 205. [3] Book II, fol. 120, Mortdauncestre, No. 37. [4-5] These two words are probably a misprint for 'mesme.' [6] Book II, fol. 120, Mortdauncestre, No. 38. [7] An error for 'esné.' [8] Book II, fol. 120, Mortdauncestre, No. 39. *Eyre of Kent*, iii. 41. [9] An error for 'abatu.' [10] Book II, fol. 127, *Nuper obiit*, No. 10. See also *Eyre of Kent*, iii. 41.

18. In dower it is a good answer to say that the husband and she purchased the tenements whereof she demands dower jointly, and therefore her husband was never solely seised etc.

See a good case of dower under the title Voucher Mich. 5 Edw. II.

19. Warranty of Charters. The defendant came and said that he could not deny the warranty, nor that the tenant was impleaded and had lost etc. Whereupon,

Spigurnel J. Although this writ be personal like a writ of covenant where a man has recovery of no land but of damages only, it serves the plaintiff in the place of voucher to warranty. Therefore, because you cannot deny the warranty on this writ, the court awards that the plaintiff recover to the value of the land lost and his damages. This was awarded on good consideration.[1]

20. *Note* by Spigurnel J. on a mortdancestor. If the tenant be essoined and make default at the day of the essoin he will not be resummoned, and the assize will be taken on his default, for an essoin is equivalent to a default where it is not warranted etc.

21. On a mortdancestor it is good pleading to say that 'such a one is tenant of part of your demand,' or that 'I have nothing save jointly etc.,' and if it may be found etc. 'you have an elder brother etc. of the same father and mother'; and then to plead over to the action etc.

22. Mortdancestor. The tenant said that the tenements were devisable by testament, and the demandant could not deny this. Thereupon the writ was abated, without any allegation that in fact the tenements were devised etc., for it might be that the writ said the truth etc. and that the ancestor died seised. And yet the tenant might make his title by devise etc.

23. *Nuper Obiit.* The tenant said that the ancestor of whose seisin he demands etc. did not die seised etc. And the others to the contrary etc. And the inquest said that he of whose seisin etc. was in peril of death, and was so the day before he died; the next day he was against his will carried out by R. his brother and died away from the tenements.

[1] For the sake of clearness the order of words in the translation differs from that in the French text.

Spig. Donques morust il assez seisi. Et agarda que le demaundaunt recovere *non obstante* disseisin fait antecessour.

24.[1] *Nota.* Si home soit obligé en dette ou en covenaunt par escript, et mit un tiel clause en l'escript : ' Et ad maiorem huiusmodi rei securitatem inueni fideiussores quorum unusquisque in totum et in solidum se obligauit ' que coment que nulle parle forsque le principal en l'escript, si les auterz mittont lour sealz, ilz acceptent ceo que le principal parle et cy sont mesmez principals—par *Spyg.* (justicez) ;

quod nota en title d'assise 9 E. 3. Semle cas[2] etc.

25.[3] Home graunt le revercion del tenaunt a terme de vie a ij et a lez heirez l'un. Et cesty que ad le fee devie et le tenaunt a terme de vie fuit enpledé et fist defaute après defaute et le heire cesty que avera le fee en le revercion vient et preia d'estre resceu. Et fuit counterpledé pour ceo que un auter ad le revercion a terme de vie etc. que ne vient etc. Et non allocatur, mès fuit resceu etc.

Et *Ber.* dit que il savera tout etc. Et *Ber.* dit que s'il preia aide de cesty en le revercion et il ne voile joyner etc. et pus le tenaunt a terme de vie fait defaut après defaut cesty en le revercion ne serra resceu etc.

26.[4] Dowere. Le tenaunt vouche a garraunt un P. que garraunti et voucha oustre le heire le baroun de que dowement que corps et terre sont en la garde etc.

Scrop. El n'ad riens en la garde si non a volunté C. que est garden de droit dount le heire doit estre vouché en la garde C. Jugement etc.

Et pour ceo que el conust que el fuit seisi del cors le heire et tient ces terres, et a cestuy que vouche n'est a conuste quel estat el ad en le garde etc. les justices disount le chalenge nul.

Scrop. Vous aves cy la femme et l'enfaunt que diount que l'auncestre aliena mesme lez tenementz quaunt il fuit deins age et morust en pledant issint que l'enfaunt ad accioun a demaunder mesmes les tenementz en demesne. Jugement si deves garraunter etc.

[1] Book III, fol. 1, Obligacion, No. 16. [2] The case has not been found in the 'Abridgement.' It seems to be *Year Book*, 10 Edw. III, fol. 20. [3] Book III, fol. 99, Resceit, No. 160. [4] Book III, fol. 203, Voucher, No. 226.

Spigurnel J. Then he died sufficiently seised. And he awarded that the demandant should recover notwithstanding that his ancestor was disseised.

24. *Note.* If a man be bound in debt or in covenant by a writing, and he put in the writing such a clause as this :—'And for the greater security of this matter I have found sureties, each one of whom has bound himself *in totum et in solidum*,' then although none speaks in the writing save the principal, if the others put their seals thereto, they accept what the principal states, and so they are themselves principals : this was said by Spigurnel J.

Note this under the title of Assize, 9 Edw. III. A similar case etc.

25. A man grants the reversion of a tenancy for a term of life to two persons and the heirs of one of them. And the one who had the fee died, and the tenant for a term of life was impleaded and made default after default ; and the heir of him who had the fee in the reversion came and prayed to be received. And he was counterpleaded because another person had the reversion for the term of his life etc. who did not come etc. The counterplea was not allowed, and he was received etc.

Bereford C.J. said that he who was received would save all etc. And he said that if he prayed aid of him in the reversion, and he would not join etc. and then the tenant for a term of life made default after default, those in the reversion would not be received etc.

26. *Dower.* The tenant vouched to warranty one P. who warranted, and vouched over the heir of the husband, of whose endowment etc. And the body of the heir and the land were in her ward etc.

Scrope. She has nothing in the wardship save at the will of C. who is guardian in the right, wherefore the heir ought to be vouched as in the wardship of C. Judgment etc.

And because she acknowledged that she was seised of the body of the heir, and held his lands, and it is not for him who vouches to know what estate the vouchee has in the wardship etc., the justices said that the challenge was of no effect.

Scrope. You have here the woman and the infant who say that the ancestor alienated the same tenements when he was within age, and died while pleading on them, so that the infant has an action to demand the same tenements in demesne. Judgment whether [he] ought to warrant etc.

Hervy. L'enfaunt ne doit garraunter, mès vous come gardein en nosme le heire, issint que sa accioun a lui serra savé quaunt que il vient a sa plein age.

Scrop. Priomus que ceo soit entré en rolle etc.

Et la court dit que ceo ne fuit mestre, dount el garrauntit et preia sa dowere etc.

27.[1] N. et J. sa femme conuz tenementz del heritage sa femme par fyn estre le droit E. et ceo luy rendi a luy et a ces heires. Et l'avaundit N. et J. garraunte et les heires J. al E. et a cez heires. J. morust. E. fuit enpledé et vouche a garraunte le heire J. que vient et demaunde jugement del malves voucher par reson que il luy vouche par un fyne que se leva enter N. et J. sa femme et E. le quel N. fuit partye al fyne et est uncour en plein vie nient nosmé etc.

Herle. Chescun voucher est en le droit mès N. n'avera riens sinon par sa femme après que mort le droit se vesti en la parson J. le droit heyre J. que nous avomus vouché.

Berr. Justice (ad idem). N. est party al fyn nemie come cesty que puit le droit rendre ne come cesty que la court suffre luy lier luy et cez heires a garraunt en cest cas, mès il est issint party que taunt come J. fuit enter ces bras ne puit rien rendre saunz etc.

28.[2] Dowere vers O. que vouche a garraunte S. que vient et garraunt et vouche P. fitz et heire le baron de qi dowement etc. que vient et demaunde que il ad de luy lier etc. S. mist avaunt fait son auncestre que testmoigne sa femme estre joynt feffé en le fraunkemariage ove S. son baroun.

Warr. S. ad soule vouché sauns nosmé sa femme. Jugement etc.

Wylby. Il ne puit en auter maner voucher, par que

War. Vous puissez aver preié ayde etc. et pus joyntement aver vouché.

Howe. Pur ceo qe S. ad soul vouché par le fait que testmoygne sa femme estre joynt feffé sauns fere mencion de luy, cy agarde la court que le demaundaunt recovere vers le tenaunt et le tenaunt vers le garraunte et que P. soit assouthé de le garraunte.

Et issint ycy doyt preier ayde de la femme et pus vouche.

[1] Book III, fol. 204, Voucher, No. 242.

[2] Book III, fol. 204, Voucher, No. 243. This case is attributed to Mich. 4 Edw. II.

Stanton J. It is not the infant who ought to warrant, but you as guardian in the name of the heir, so that his action will be saved to him when he comes to his full age.

Scrope. We pray that this be entered in the roll etc.

The court said that this was not necessary, whereupon she warranted, and prayed her dower etc.

27. N. and J. his wife acknowledged by a fine certain tenements of the inheritance of the wife to be the right of E., and rendered them to him and his heirs; and the aforesaid N. and J. and the heirs of J. warranted to E. and his heirs.[1] J. died. E. was impleaded and vouched to warranty the heir of J. who came and asked judgment of the voucher as bad for the reason that he vouched him by a fine which was levied between N. and J. his wife and E., and this N. was party to the fine and is still alive, and not named etc.

Herle. Every voucher is in the right. But N. had nothing save by his wife, after whose death the right vested in the person of J. the right heir of J. whom we have vouched.

Bereford C.J. (in agreement). N. is a party to the fine, not as one who can render the right nor as one whom the court suffers to bind himself and his heirs to warranty in this case, but he is a party because J. while she was in his arms could render nothing without him etc.

28. Dower against O. who vouched S. to warranty. S. came and warranted, and vouched P. the son and heir of the husband of whose endowment etc. P. came and asked what S. had to bind him etc. S. put forward the deed of his ancestor which witnessed that the wife of S. was jointly enfeoffed in frank marriage with S. her husband.

Warwick. S. has vouched solely without naming his wife; we ask judgment etc.

Wilby. He can vouch in no other manner. Whereupon,

Warwick. You could have prayed aid etc. and then have vouched jointly.

Howard J. Because S. has vouched alone by the deed, which witnesses that his wife was jointly enfeoffed, without mentioning her, the court awards that the demandant recover against the tenant, and the tenant against the warrant, and that P. be excused from warranty.

And so he ought in this case to have prayed aid of his wife and then vouched.

[1] This must be taken to mean that they bound themselves and the heirs of J. to warranty.

29.[1] Dowere. Le tenaunt vouche A. que vient et garraunte e vouche luy mesme et sa femme. Et fuit chacé de moustre cause etc. par que il dit que sa femme quaunt el fuit soule luy enfeffa ove garrauntie etc. Et le voucher estut.

30.[2] *Nota.* Si enfaunt deins age soit en garde et son tenaunt morust soun heyre deins age et seignor seisie luy come garde par reson de garde, si la mere l'enfaunt que est tenaunt par availe porte brefe de dowere vers ascun que fuit enfeffé par le pere l'enfaunt tenaunt par avayle, le feffé ne vouchera le seignor paramount par reson de garde, eins vouche l'enfaunt de que son feffour tient come gardein par *Spig.* et *Fyncham.*

Causa put estre *ut credo* pour ceo que le fitz cesty que se obliga etc. pourra venir a sa plein age avaunt ceo que son seignur de que il tient vient a sa plein age etc.

31.[3] Nota que un tenaunt vouche a garraunte un E. et preia que il soit somoné en mesme le counté et en le counté de Surr'.

Gold. Il ne serra somone forsque en l'un counté.

Ingh. Il covient que il soit somoné en ambideux countes quar s'il ne soit somoné *ut supra* la terre ne puit nient estre prise en auter counté et nous ne poiomus aver en value forsque soule dez tenementz que sont prises en mayn le roy.

Hervy. Il ne serra somoné forsque soule en ceo counté et quaunt il vient a ceo que il fra a la value la court vous aydera etc.

Et sic non erat sommonitus nisi in uno comitatu.

[1] Book III, fol. 204, Voucher, No. 246. [2] Book III, fol. 204, Voucher, No. 247. [3] Book III, fol. 204, Voucher, No. 248. See also *Eyre of Kent*, ii. 204.

29. *Dower.* The tenant vouched A. who came and warranted and vouched himself and his wife. He was driven to show the reason for this, whereupon he said that his wife when she was sole enfeoffed him with a warranty etc. The voucher stood.[1]

30. *Note.* If an infant within age be in ward and his tenant should die leaving his heir within age, and if the lord seizes the heir as his ward by reason of wardship, and if the mother of this infant heir who is tenant paravail brings a writ of dower against a man who was enfeoffed by the father of the infant who is tenant paravail, the feoffee will not vouch the lord paramount by reason of wardship, but he will vouch the infant, of whom his feoffor held, as guardian :—by Spigurnel J. and *Fincham.*

The reason may be, as I think, because the son of him who bound himself to the warranty etc. may become of full age, before the lord of whom he holds comes to his full age.

31. *Note.* A tenant vouched to warranty one E. and prayed that he should be summoned in the same county and also in the county of Surrey.

Goldingham. He will not be summoned save in one county.

Hengham. It is necessary that he be summoned in both counties, for if he be not summoned (as above) the land cannot be taken in the other county, and we cannot have lands to the value etc. save only of the tenements which are taken into the king's hand.

Stanton J. He will not be summoned save in this county, and when it comes to the point when he is to give to the value the court will aid you etc.

So he was not summoned save in one county.

[1] For another case of a man vouching himself and his wife, see *Year Book Series,* Vol. IV. p. 4.

PLEAS OF VARIOUS TERMS CHIEFLY IN 4 EDW. II.[1]

1. THE PRIOR OF ST. JOHN OF JERUSALEM *v.* EVREUX.[2]

Ceo vous moustre le priour del hospital de seint J. de Jerusalem de tut Engletere e Johan frere de mesme le hospital qe W. persone etc. atort ne lez tient covenaunt entre eux fet de lez fruz del eglise de Kelleswell de iiij aunz. E pur ceo atort qe le Lundy prochein après la feste seynt Michel l'archangle l'an xx le roi qi mort est l'avantdit persone lez lessa lez fruys del eglise avauntdite jesques a terme de iiij aunz etc. de quel terme il furent seisis del Lundy avauntdit jesques etc. prochein ensiwaunt issi qe adonque celi W. resigna l'eglise avantdite en la meyn l'esvesqe par quel resignement ceti priour e Johan frere etc. furent oustez e perderent lez fruiz del eglise de iiij aunz par quei il unt sovent venz etc.

Ruston. Nous entendoms pas qe ceste court ad power a trier ceo plee par reson de iij poyns, un est pur ceo qe il se pleint de un covenant enfreynt de fruz de seynte eglise qe soune en espritualité ; un altre qe vous nous surmettez un resignement en la meyn l'esvesqe e de ceo vous prenez vostre accioun, la quele ne put estre trié ceynz, par quei etc.

Malor. 'Res spirituales per uendiciones efficiuntur temporales.' Par quei responez outre.

Roston. A tel counte ne deyvent il estre respoundu, q'il diount en lour counte qe le priour e Johan frere furent oustez par nostre resignement etc. ; et nous voloms averrer par record qe nous portames vers vous a mesme cel temps un bref de dette auxi cum vers le priour et vous a cel tendistes de averrer le revers issi qe l'averement est unquore pendaunt ceynz. Jugement si vous encountre vostre conissaunce demene en court qe porte record pusez dire qe vous futes prior a cel tens etc.

Herle. Soiez avowé.

[1] Five of the following ten cases occur in *P* among the reports of Easter term 4 Edw. II. They occur in none of the other reports, and they are obviously misplaced. Two more of the ten are additional but useful reports of cases which have been printed in earlier volumes ; and three others have escaped notice in those volumes. The three Notes (11 *a*, *b*, and *c*) are undated. [2] From *P* (fol. 62 v°). In this MS. the case is wrongly attributed to Easter 4 Edw. II, as the Record shows that it was heard in Easter 35 Edw. I. Another report of it occurs in the *Year Books of Edw. I* (Rolls Series, No. 31), vol. v, p. 510.

PLEAS OF VARIOUS TERMS CHIEFLY IN 4 EDW. II.

1. THE PRIOR OF ST. JOHN OF JERUSALEM *v.* EVREUX.

This shows you the prior of the Hospital of St. John of Jerusalem in all England and John a brother of the same hospital that [Master John] parson etc. wrongfully holds not to them a covenant made between them of the fruits of the church of [Kempsey] for four years; and for this wrongfully because on the Monday next after the feast of St. Michael the archangel in the twentieth year of the late king, the aforesaid parson leased to them the fruits of the church aforesaid for a term of four years etc.; and of this term they were seised from the Monday aforesaid until etc. next following, when this same [Master John] resigned the church aforesaid into the hand of the bishop, and by this resignation this prior and John the brother etc. were ousted, and they lost the fruits of the church for four years, wherefore they have often come etc.

Roston. We do not think that this court has power to try this plea and for [two] reasons. One is because he complains of a broken covenant concerning fruits of Holy Church, which implies spiritualities; the other is that you attribute to us a resignation into the hand of the bishop, and on this you base your action which cannot be tried here, therefore etc.

Malory J. 'Spiritualities are made temporalities by sales.' Therefore answer further.

Roston. On this count they ought not to be answered, for they say in their count that the prior and brother John were ousted by our resignation etc.; and we wish to aver by the record etc. that we brought against you at that same time a writ of debt as against the prior, and to this you tendered an averment of 'the contrary,' and this averment is still pending here. Judgment whether against your own acknowledgment in a court which bears record you can say that you were prior at that time etc.

Herle. Be avowed.

Hedon. Nous fesoms protestacioun qe nous le mettoms a counte soulement.

Ber. Vostre excepcion est al accioun et pur ceo veiez si vous la volez pur respons.

Ruston enparla e revynt e demaunda jugement du bref qe le bref dit ' quod teneat priori hospitalis et Iohanni fratri eiusdem,' la ou il dut dire ' confratri eiusdem hospitalis ' axi cum est la forme en la chauncellerie ' tali abbati et conmonico eiusdem abbatis.' Et fut chacé outre. Et dixerunt q'il ne furent pas ousté par sa defaute ne par son resignement, prest etc. Et alii econtra.

Mès avaunt il demaunderent jugement de la variaunce, pur ceo qe lour bref voleit ' de fructibus ecclesie ' e le especiauté voleit ' decimam ' simplement.

Ber. Il vous ad lessé l'eglise par taunt il vous ad lessé lez fruz, sicum il dit, ' Bibe sciphum ' ; id est, ' licorem contentum in scipho.'

The Record of the Case.

De Banco Rolls, 35 Edw. I., Easter (No. 163), r. 186; Worcester.

Magister Iohannes de Ebroicis nuper persona ecclesie de Kemeseye summonitus fuit ad respondendum priori hospitalis sancti Iohannis Ierosolimitani in Anglia et fratri Iohanni de Cyreozy fratri eiusdem hospitalis de placito quod teneat eis conuencionem factam inter ipsum magistrum Iohannem de Ebroicis et prefatum fratrem Iohannem de fructibus ecclesie de Kemeseye eidem fratri Iohanni per predictum magistrum Iohannem ad terminum quatuor annorum dimissis etc. Et unde iidem prior et frater Iohannes per attornatum suum dicunt quod cum predictus magister Iohannes die Iouis proxima ante festum sancti Petri ad uincula anno regis nunc uicesimo secundo apud Gloucestre dimisisset[1] prefato fratri Iohanni fructus ecclesie predicte tenendos a predicto die Iouis usque ad idem festum quatuor annorum plenarie completorum pro quater uiginti libris annuatim soluendis et obligauit se ad terminum predictum warantizandum etc. per quam quidem dimissionem idem frater Iohannes fuit seisitus de fructibus ecclesie predicte ab eodem festo usque ad festum beate Marie Magdalene anno regis nunc tricesimo tercio quo tempore predictus magister Iohannes predictam ecclesiam in manus episcopi loci resignauit per quam resignacionem predicti prior et frater Iohannes a fructibus predictis et a firma predicta amoti fuerunt contra conuencionem predictam. Unde dicunt quod deteriorati sunt et dampnum habent ad ualenciam centum librarum et inde producunt sectam etc. Et proferunt partem cuiusdam scripti indentati que predictam conuencionem testatur etc.

[1] *Sic.*

Hedon. We protest that we make the exception to the count only.

Bereford C.J. Your exception is to the action, and therefore consider whether you wish it to be your answer.

Roston imparled and came back, and asked judgment of the writ which said 'that he hold to the prior of the hospital and John *frater* of the same hospital,' whereas he should have said '*confrater* of the same hospital,' just as is the form in the chancery 'to such a one the abbot and the fellow monk of the same abbot.' He was driven to answer further, and said that the plaintiffs were not ousted by his default nor by his resignation, ready etc. And the others to the contrary.

They had also previously asked judgment on the ground of variance, because the writ spoke of the 'fruits of the church'; and the specialty spoke of the 'tithe' simply.

Bereford C.J. He has leased the church to you, therefore he has leased to you the fruits; as if he said 'Drink the cup'—that is, 'the liquor contained in the cup.'

Translation of the Record.

For the reference, see opposite.

Master John d'Evreux lately parson of the church of Kempsey was summoned to answer the prior of the hospital of St. John of Jerusalem in England and brother John de Cyreozy a brother of the same hospital on a plea that he hold to them a covenant made between him the said Master John d'Evreux and the aforesaid brother John concerning the fruits of the church of Kempsey[1] demised to the same brother John by the aforesaid Master John for a term of four years etc. Whereupon the same prior and brother John by their attorney say that whereas the aforesaid Master John on the Thursday[2] next before the feast of St. Peter's Chains in the twenty-second year of the present king at Gloucester demised to the aforesaid brother John the fruits of the church aforesaid to hold from the aforesaid Thursday until the same feast after four[3] fully completed years in return for four score pounds to be paid annually, and he bound himself to warrant the term aforesaid etc.; and by this demise the same brother John was seised of the fruits of the church aforesaid from the same feast until the feast of the Blessed Mary Magdalene in the thirty-third[4] year of the present king, when the aforesaid Master John resigned the aforesaid church into the hands of the bishop of the place, by which resignation the aforesaid prior and brother John were ousted from the fruits aforesaid and from the farm aforesaid contrary to the aforesaid covenant. Whereupon they say that they are injured and have damage to the value of one hundred pounds, and thereof they bring suit etc. And they proffer one part of a certain indented writing which witnesses the aforesaid covenant etc.

[1] Four miles south of Worcester.
[2] 29 July 1294.
[3] The 'quatuor' of the MS. is possibly an error for 'quatuor decem.'
[4] Thursday, 22 July 1305.

The Record of the Case—*continued.*

Et magister Iohannes per attornatum suum uenit et defendit uim et iniuriam quando etc. et bene cognoscit predictam conuencionem etc. set bene defendit quod predicti prior et frater Iohannes non fuerunt amoti a predicta firma seu fructibus ecclesie predicte per resignacionem ipsius magistri Iohannis factam de predicta ecclesia seu aliquem alium defectum eiusdem magistri Iohannis etc. Et de hoc ponit se super patriam.

Et prior et frater Iohannes similiter.

Ideo preceptum est uicecomiti quod uenire faciat hic a die sancti Michaelis in tres septimanas xij etc. per quos etc. et qui nec etc. ad recognoscendum etc. quia tam etc.

2. ANON.

I.[1]

Ceo vous moustre Robert e Maud sa femme etc. qe B. etc. atort ne lez teent convenaunt entre eux fet de x acres de bois. E pur ceo atort qe la ou lez avauntdiz R. et M. sa femme mesme ceo boys tindrent en dowere mesme ceste Maude del heritage une Isabel de B. les quels Richard et M. mesme cele bois al avauntdite B. lesserent a tote la vie Maude saunz fere wast ou destruccioun entre eux tail', la ad l'avauntdite Alice fet wast etc. *scilicet* abatu keynes pris chescun de demi marke, e cent freynes pris de checun etc., cent pomeres pris etc. encountre le covenaunt avauntdit e a la desheritage l'avauntdite Isabel, par quei mesme cele Isabel porta bref de wast vers mesme ceux Robert e Maude ou le wast fu trové, par quei ele recovery vers mesme ceux Robert e Maud le leu wasté e cez damages en trebble par forme de statut e issint est ele alé encountre covenaunt atort.

E l'autre defendit etc. e demaunda jugement si a tel bref ou counte devereit respoundre, qe par bref e par counte vostre principal demaunde est x acres de bois les queux il ne pount en nule manere recoveryr ne *per consequens* damages qe sount accessories depuis qe le principal en nule manere ne put estre recovery.

Ber. Ditez outre.

Est. Quei avez vous du covenaunt ?

Toud. Sute etc., e si mester soit bon pays.

Est. E nous jugement si a tel bref saunz especiauté deyve respoundu.

Toud. Ne lyt pas a ly de fere wast des tenementz a li lessez en la

[1] From *P* (fol. 62 r°

Translation of the Record—*continued.*

And Master John comes by his attorney and denies tort and force when etc., and well he acknowledges the aforesaid covenant etc. ; but well he denies that the aforesaid prior and brother John were ousted from the aforesaid farm or from the fruits of the church aforesaid by the resignation of him the said Master John from the aforesaid church or by any other default of the same Master John etc. ; and of this he puts himself upon the country.

And the prior and brother John likewise.

Therefore the sheriff is ordered to cause to come here three weeks after the feast of St. Michael twelve etc. by whom etc. and who neither etc. to make recognition etc. because as well etc.

2. ANON.

I.

This show you Robert and Maud his wife etc. that B. etc. wrongfully holds not to them a covenant made between them of ten acres of wood ; and for this wrongfully because there where the aforesaid Robert and Maud his wife held this same wood as the dower of this same Maud of the inheritance of one Isabel of B. and the same [Robert] and Maud leased this same wood to the aforesaid B. for all the life of Maud without waste or destruction being made or done, there the aforesaid [B.] made waste etc., that is to say she felled oaks each appraised at half a mark, one hundred ash trees each appraised etc. one hundred apple trees each appraised etc. against the covenant aforesaid and to the disinheritance of the aforesaid Isabel, and thereupon this same Isabel brought a writ of waste against the same Robert and Maud, and waste was found. Thereupon she recovered the place wasted against the same Robert and Maud and her damages in treble by the operation of the statute[1] ; and so has B. gone wrongfully against the covenant.

The other party denied etc. and asked judgment whether he ought to answer such a writ or count, for by writ and by count [their] principal demand is ten acres of wood which they cannot recover in any way ; and consequently since the principal cannot in any way be recovered, they cannot recover damages which are accessory.

Bereford C.J. Say something further.

Est. What have you in proof of the covenant ?

Toudeby. Suit etc., and if there be need an inquiry by the country.

Est. And we ask judgment whether they ought to be answered on such a writ without specialty.

Toudeby. It would not be lawful for him to make waste of the

[1] Stat. Glouc. c. 5.

fourme, tut n'ust il especiauté qe testmoigne le covenaunt par quei il semble qe nous devoms estre respoundu saunz especiauté.

Malm. Greyndre mester serroit a vous d'aver especialté a excuser vostre tort, qe il vous donast poer de fere wast en le boys avauntdit, qe a ly de aver especialté qe testmoigne le covenaunt, par quei etc.

Ber. Si ceo soit veyrs, ceo q'il dit encountre covenaunt graunt duresse serroit s'il ne fu respoundu a cesti bref saunz especiauté depus qe de commune ley ne lyt a nuly fere wast des tenemenz a ly lessez en tele manere par quei nous vous dioms qe vous responez.

Est. Par la ou il se pleynt de wast fet en x acres de bois q'il tindrent en dowere Maude del heritage Ysabel, la vous dioms nous qe en dreit de v acres nul wast fet, prest etc.; e en dreit de lez autres v acres Ysabel est mesme seisi e en dreit de ceux vous feites le wast e nent nous, prest etc.

Ber. Taunt amounte qe vous ne fetes pas wast etc.

Et sic ad patriam.

II.[1]

Vn Alice porta son bref de covenant vers Jon de la Rokele de ix acres de boys qe mesme celuy Jon tint du lees mesme cestui Alice qe mesme ceux tenementz tint en dowere del heritage une Eleyne, par la est mesme cely Jon atort venu encontre covenant e ad fait vast vente du bois avantdit *scil.* de mil cheines pris etc. par quei Eleine de qi heritage Alice mesme cel boys tint certein jour certein an devant Sire Rauf de Hengham e ses compaignons porte bref de wast issi qe le wast fut trové e les damages taxés a xviij livres par quei Eleine ses damages ver mesme cest Alice recovra. Issi est il atort etc. e a ses damages etc.

Est. Sire, nous n'entendom mie qe a tel counte ne a tel bref deit ele estre respoundu, qe ele ad lié sa accioun par mi un wast q'il assigne, par quei celui qe voet recoverir en tel cas il covent q'il recovre deux choses, *scil.* le principal e les accessories; dont desicom par ley de terre ele ne put recoverir le principal, qe serra le soil, saunz bref de vast q'est ordené pur remedie en tel cas, nous demandoms jugement s'il deive a cesti bref ou a tel counte estre respoundu, qe ne soune fors qe tant-soulement a recoverir damages.

[1] From *Y* (fol. 249 r°). In this MS. the case is attributed to Mich. term of 30 Edw. I. There is no corresponding report in the printed *Year Book* of that year.

tenements leased to him in this fashion if there were no specialty which witnessed the covenant. Therefore it seems that we ought to be answered without specialty.

Malberthorpe [on the same side]. There would be greater need for you to have specialty to excuse your tort, that is to say, specialty showing that he gave you power to make waste in the wood aforesaid, than for him to have specialty in witness of the covenant. Therefore etc.

Bereford C.J. If what they say be true, that the deforciant went against the covenant, it would be great hardship if they were not to be answered on this writ without specialty, seeing that at the common law it is not lawful for any man to make waste of tenements leased to him in this way. Therefore we tell you that you must answer.

Est. Whereas he complains of waste made in ten acres of wood which they held as the dower of Maud of the inheritance of Isabel, we tell you that as regards five acres no waste has been made. Ready etc. As regards the other five acres Isabel is herself seised of them, and as regards those, you made the waste and not we. Ready etc.

Bereford C.J. Tantamount to this, that you did not make wâste etc.

And so to the country.

II.

One Alice brought her writ of covenant against John de la Rokele of nine acres of wood which this same John held of the lease of this same Alice who held these same tenements in dower of the inheritance of one Elayne :—Whereas this same John has wrongfully gone against the covenant and has made waste and sale of the wood aforesaid, that is to say, of one thousand oaks appraised at etc., whereupon Elayne, of whose inheritance Alice held this same wood, on a certain day and in a certain year brought a writ of waste before Sir Ralph of Hengham and his fellows, and the waste was found and the damages were taxed at eighteen pounds ; whereupon Elayne recovered her damages against this same Alice so that John has wrongfully etc. ; to her damage etc.

Est. Sir, we do not think that she ought to be answered on such a count and such a writ, for she has laid her action on an act of waste which she assigns ; but he who wishes to recover in such a case must recover two things, to wit, the principal and the accessories ; therefore, inasmuch as by the law of the land she cannot recover the principal, which would be the soil, without a writ of waste, which is provided as a remedy in such a case, we ask judgment whether she ought to be answered on this writ or this count, for they imply only the recovery of damages.

Ber. Si ele ne fut a cesti bref respoundu, ele serreit sanz recoverir, qe par vostre dit vous lui chaceriez a un bref de wast le qel ele ne put user qe ele ne put nent dire ' fecit wastam ad exhereditacionem suam etc.' E pur ceo responez outre.

Est. Quei unt il du covenant ?

Toud. Nous voloms averer le lees estre fet a vous *ut supra.*

Scot. E nous jugement, desicom il unt counté par mi un covenant en ceo q'il dit ' qe atort e encountre covenant etc.' qe naturelement cheet en especiauté ; e ele ne mostre nul especiauté, einz tende un averement qe n'est mie recevable en leu d'especiauté. Jugement.

Ber. Si un home lessa tenementz a un autre a terme des aunz saunz especiauté, entendez vous q'il poeit fere wast ? (*quasi diceret,* Non). E desicom il tendent d'averer le lees le quel vous ne dedites mie, semle qe ceo est assez. E d'autrepart wast est une chose qe soune encountre ley ; par quei a vous girreit a mostrer especiauté pur coverir vostre tort, qe naturelement si dei especiauté, si nul iseit touz jours demorer a celui a qi le lees se fait.

Est. Sire la ou ele porte cestui bref ver nous e dit qe nous tenoms de son lees x acres de bois del heritage une Eleine, la vous dioms qe Eleyne n'avoit ren en cel bois si noun v acres ; e les autres v furent a une Margerie nostre femme com parcener a Eleine, par quei Eleine ne porta nent son bref fors qe v acres, le quel wast mesme cest Eleine avoit fet avant ceo qe nul lees a nous fit, issint qe ele ne put le tort en nostre persone affermer, prest etc.

Et alii contrariam.

Ideo ad patriam.[1]

3. ANON.[2]

David persone del eglise de Kagestoke W. Herbert e F. de C. porterent bref de covenaunt vers J. Marmion e counterent :—Ceo vous moustre D. persone del eglise de K. e W. Herbert e F. de C. qe ne sywt pas assignes Roger Marmioun etc. qe J. Marmioun atort ne li tent covenaunt fet entre J. et Roger Marmioun qi assignes il sount d'un mees x acres de terre et iiij liverez de rente ove les apurtenaunz en Weston. E pur ceo atort qe la ou il covynt tel an tel jour tel leu entre lez avauntdiz J. e R. qi assignes il sount qe mesme celi dona e graunta al avauntdit R. cel

[1] The words ' Mich. xxx ' are here added in the MS. [2] From *P* (fol. 62 v°).

Bereford C.J. If she were not answered on this writ, she would be without a recovery, for according to your statement you would drive her to a writ of waste which she could not use, for she could not say that 'he has made waste to her disinheritance etc.' Therefore answer further.

Est. What have they of the covenant?

Toudeby. We wish to aver that the lease was made to you (as above).

Scotre. And we ask judgment, seeing that they have counted by a covenant, in that they say that wrongfully and against covenant etc. which is in its nature a matter of specialty; and she shows no specialty, but offers an averment which ought not to be received in lieu of specialty. We ask judgment.

Bereford C.J. If a man lease tenements to another for a term of years without specialty, do you think that he can make waste? (*implying*, No); and as she offers to aver the lease which you do not deny, it seems that this averment is sufficient. Besides waste is a thing which implies something against the law. Therefore it lies with you to show specialty to cover your wrong; for naturally specialty ought, if any there be, always to remain with him to whom the lease is made.

Est. Sir, there where she brings this writ against us and says that we hold by her lease ten acres of wood of the inheritance of one Elayne, there we say that Elayne had nothing of this wood save five acres; and the other five belonged to one Margery our wife, the parcener of Elayne; and therefore Elayne brought her writ of five acres only, and this waste this same [Alice] made before any lease was made to us, so that she cannot affirm the wrong in our person. Ready etc.

And the others the reverse.

Therefore to the country.

3. ANON.

David parson of the church of Kagestock W. Herbert and F. of C. brought a writ of covenant against J. Marmioun and counted thus:— This show you David parson of the church of Kagestock and W. Herbert and F. of C. who does not sue, the assigns of Roger Marmioun etc. that J. Marmioun wrongfully does not hold to them the covenant made between J. and Roger Marmioun whose assigns they are of one messuage ten acres of land and four librates of rent with their appurtenances in Weston. And for this wrongfully because there where it was agreed in a certain year and on a certain day and at a certain place between the aforesaid J. and Roger whose assigns they are, in such way that this same J. gave and granted to the aforesaid Roger this

mees a terme de la vie Roger e après son deces a cez executours ou a cez assignes a terme de xx aunz par quel covenaunt Roger fut seisi tote sa vie e en soun lit moriaunt fit soun testament e ordina cez executours *scil.* D. W. e F. qi ne swyt pas e qe cez biens e ces chateux soient a lour ordinaunces. E mesme ceux D. W. e F. après la mort Roger auxi cum executours vyndrent al avantdit J. e ly prierent q'il lez tensit covenaunt de ceo mees etc. il tenir ne voleit eynz atort etc. E le bref voleit :— 'Precipe J. Marmion seniori quod teneat D. W. et F. assignauntes R. Marmioun conuencionem inter eos factam etc.'

Ruston. La ou homme deit aver recoveryr par bref de covenaunt sicum assigne, il covent q'il die qe la chose ly fut assigné en la vie celi de qi assignement il cleyme, q'il pusse mostrer qe l'assignement fut fet par especiauté. E issint ne fount il pas, eynz q'il tygne covenaunt etc. e liount lour accioun par resoun de un devys. Jugement si a tel counte deyvent estre respoundu.

Scotre (ad idem). Assignement naturelment suppose la propreté estre a celi a qi il est assigné. Mès ceo ne poount il dire etc. q'il diount q'il lur tygne covenaunt par la resoun q'il sount executours ou la propreté est al mort.

Herle. Nous ne pooms autre bref en la chauncellerie aver pur executours, la ou il ne sount pas seisi après la mort le testatour, dount il covent qe nous eyoums cel bref, qe si nous demaundassoms bref cum executours nous n'averyoums pas par resoun de devys, e mesqe nous ussoms la court n'avereit pas conissaunce. Jugement.

Toud. Primes demaundez vous par vostre counte q'il vous tigne covenaunt auxi come assignez e ceo veut vostre bref, e puis liez vostre accioun cum executours. Jugement de la variaunce.

Herle. Executours ne poount aver autre bref si noun cum assignez la ou il ne furent pas seisiz, mès en cas la ou il ount esté seisiz e pus engetté, il recoverunt par bref de engettement.

4. EXEWYKE *v.* EXEWYKE.[1]

Breue de recto, ou mise de graunte assise fut joynte entre privez de saunke etc.

Beatrice la fille James de Exewyke porta soun bref de dreit vers Richard le fiz Richard de Exewyke de un mees e xl acres de terre etc.

[1] From *P* (fol. 62 r°).

messuage for the term of Roger's life and after his decease to his executors or his assigns for a term of twenty years ; and by this covenant Roger was seised all his lifetime, and on his deathbed he made his will and appointed his executors, to wit David and W. and F. who does not sue, and provided that his goods and chattels should be at their disposal. And these same David, W. and F. after the death of Roger as executors came to the aforesaid J. and prayed him that he would hold to them the covenant concerning this messuage etc. He would not hold it to them, but wrongfully etc. And the writ said, 'Command J. Marmion the elder that he hold to David W. and F. the assigns of Roger Marmion the covenant between them made etc.'

Roston. Where a man is to have a recovery by a writ of covenant as an assign he must say that the subject-matter was assigned to him in the lifetime of him of whose assignment he claims, and he must be able to show that the assignment was made by specialty. This they do not do ; but [they count] that he hold to them the covenant etc. and lay their action on a devise. We ask judgment whether on such a count they ought to be answered.

Scotre (on the same side). An assignment naturally implies that the property is in him to whom it is assigned. But this they cannot say etc. ; for they say 'that he keep to them the covenant' because they are executors, whereas the property belongs to the deceased.

Herle. We cannot have another writ of covenant in the chancery for executors, where they have not been seised after the death of the testator. Therefore we must have this writ, for if we were to ask for a writ as executors we should not have it on account of the devise, and even if we were to have it, the court would have no cognisance [of the devise]. We ask judgment.

Toudeby. First you ask by your count that he hold to you the covenant as assigns, and this your writ mentions. Then you lay your action as executors. We ask judgment of the variance.

Herle. Executors cannot have a writ save as assigns, where they have not been seised ; but in a case where they have been seised and have afterwards been ejected they will recover by a writ of ejectment.

4. EXEWYKE *v.* EXEWYKE.

A writ of right in which the mise of the grand assize was joined between privies in blood etc.

Beatrice the daughter of James of Exewyke brought her writ of right against Richard the son of Richard of Exewyke of one messuage

e counta de la seisine une Maude, descendaunt a J. cum a fiz e heir, de J. a Johan, de J. a ceste B. q'ore demaunde cum a seor etc.

E Richard defend etc. e par la ou Beatrice demaunde un mees vers ly e counta de la seisine une Maude, en temps etc. pernaunt lez espleez etc. descendaunt etc. Richard defend tort e force e le dreit B. tut atrenché e bien conust la seisine Maude la quele M. hors de sa seisine enfeffa Richard pere ceti Richard ; e Johan frere ceti B. par mi qi ele ad counté relessa e quiteclama a mesme ceti Richard en sa seisine, après qi mort mesme ceti Richard entra cum fiz e heir. E se mette en deu e en la graunt assise nostre seignur le roi le quel il ad meillour dreit a tenir un mees etc. cum ceux qe li sount descendu après la mort Richard soun pere par successioun de heritage, le quel Richard fut feffé par M. de qi seisine etc. a qi J. frere mesme ceste B. par my qi etc. relessa e quiteclama etc. sicum il tent ou l'avaundite B. de avor sicum ele demaunde.

Warr. M. de qi seisine etc. avoit ij fiz J. e Richard. De J. issit Johan et ceste q'ore demaunde. De Richard issit Richard q'ore tient, dount si Richard deviast saunz heir de soun coups, B. par cas purreit estre soun heir. E demaundoms jugement si entre si privez du saunk gise mise de graunt assise.

Ber. Prenez garde c'est une mise sur fet. (Et stetit misa.)

Et ex hoc nota, qe mise put estre entre privez de saunk par la ou il cleyment par diverses titles sicum un par purchaz e l'autre par successioun de heritage etc.

Si[1] après mise de graunt assise joynte la parole demoerge saunz jour e la parole soit resomoné e le tenaunt face defaute après defaute le jugement ne serra pas final qe la mise fut saunz jour.

5. ANON.[2]

Un A. porta soun *replegiare* vers B.

Hedon avowa la prise par la resoun qe J. qe ore se pleint se obligea a mesme ceti B. en xx souz par an a ij termes etc. e obligea certeynz

[1] This note is written in the margin of the MS. [2] From *P* (fol. 63 r°).

and forty acres of land etc., and counted of the seisin of one Maud with descent to J. as son and heir, from J. to John and from this John to this Beatrice who now demands as sister etc.

Richard denies etc. There where Beatrice demands a messuage against him, and counts of the seisin of one Maud, in time etc., taking the profits etc., with descent etc., there Richard denies tort and force and the right of Beatrice right out, and well he acknowledges the seisin of Maud who out of her seisin enfeoffed Richard the father of this Richard ; and (he says that) John the brother of this Beatrice through whom she has counted released and quitclaimed to this same Richard (the elder) in his seisin, and after his death this same Richard (the younger) entered as son and heir ; and he puts himself on God and the grand assize of our lord the king whether he has the better right to hold a messuage etc., as tenements which descended to him after the death of Richard his father by hereditary succession, which Richard was enfeoffed by Maud of whose seisin etc., to whom John the brother of this same Beatrice through whom etc. released and quitclaimed etc. as he holds them, or the aforesaid Beatrice to have them as she demands them.

Warwick. Maud of whose seisin etc., had two sons J. and Richard. From J. issued John and [Beatrice] who now demands. From Richard issued Richard who now holds. Therefore if Richard were to die without an heir of his body, Beatrice perchance might be his heir. We ask judgment whether between such privies in blood the mise of the grand assize lies.

Bereford C.J. Take care ; for this is a mise upon a deed. (The mise stood.)

From this note that there can be a mise between privies in blood where they claim by different titles, as one by purchase the other by hereditary succession etc.

If, after a mise of the grand assize has been joined, the cause stand over without day, and the cause be resummoned and the tenant make default after default the judgment will not be final for the mise was without day.

5. ANON.

One A. brought his writ of replevin against B.

Hedon avowed the taking for the reason that [A.] who now complains bound himself to this same B. in twenty shillings a year at two terms etc., and bound certain tenements to his distress whenever

tenementz a sa destresce qe le houre qe la rente fut arrere, dount le leu ou la prise fut fete en est parcele. E pur ceo qe vj livres furent arere le jour de la prise, si avowe il etc.

Lamf. Chekune avowerie deit estre lyé par seisine e ceo n'ad il pas fet. Jugement de s'avowerie.

Malm. Est ceo vostre fet ou noun? (Et non potuit dedicere factum.)

Launf. Nous n'avoms rien en ceux tenementz si noun joyntement ove nostre femme.

Herle. Ley seofre qe homme oblige lez tenementz sa femme a sa vie, pur ceo responez.

Launf. Nous n'estoimes pas seisi al temps de la confeccioun de cel escrit de ceux tenemenz. Jugement s'il puisse avowerie fere.

Malm. Li fet veut generalment en li mesme qe teles terres soient obligez en tel leu e chargez. E desicum teuz sount lez terrez, demaundoms jugement si nous ne pussoms avowerie fere.

Hervy. Chose q'il n'avoit pas, il ne poeit doner ne graunter ne charger. E del houre qe lez tenementz ne furent pas en sa seisine le jour de la confeccioun de ceo fet, le fet est nul.

Malm. Seisi de ceux tenementz le jour de la confeccioun de cel fet, quar il furent tenuz de li en vilenage.

Et sic nota ex placito quod nemo potest obligare tenementa quod non habet, quamuis dicat ' habita et habenda.'

6. MARESCHAL *v.* LOVEL.[1]

Forfeture de mariage.

W. de Ros porta son bref de forfeture de mariage ver Jon fyz e heyr C. e dit qe come la garde e le mariage a ly appendeit par la reson qe G. son pere tint de ly un mees une carué de terre etc. par homage fealté e par escuage etc. il en peysible seisine de la garde de cors e des terres esteant durant son nounage qe tens illi tendit covenable mariage saunz estre desparagé, *scilicet*, Alice la fille C. en tel leu en la presence A. B. e C. *et hoc bys* e puis il come esteit de plein age en ceux tenementz encountre la volenté le dit W. a force e as armes s'abatist e ses biens e ses chateux a la vaillaunce de l. livres prist e enporta *scilicet* furment orge e avene a cez damages etc. de cent livres.

[1] An undated report from *Y* (fol. 258 v°). This is another report of a case of Easter term 3 Edw. II, which escaped the notice of the editors when that volume was printed (*Year Book Series*, IV. 8).

the rent should be in arrear, of which tenements the place where the distress was made is parcel. And because six pounds were in arrear on the day of the taking, he avows etc.

Laufare. Every avowry ought to be based on seisin and he has not done this. We ask judgment of his avowry.

Malberthorpe. Is this your deed or not? (He could not deny the deed.)

Laufare. We have nothing in these tenements save jointly with our wife.

Herle. The law allows that a man may bind the tenements of his wife for her life. Therefore answer.

Laufare. We were not seised at the time when this writing was made concerning these tenements. Judgment whether he can avow.

Malberthorpe. The deed says in general terms that these lands are bound and charged in this place. And since these are the lands, we ask judgment whether we cannot avow.

STANTON J. He cannot give grant or charge a thing which he does not possess. And since the tenements were not in his seisin on the day when the deed was made, the deed is void.

Malberthorpe. Seised of these tenements on the day when the deed was made, for they were held of him in villainage.

And so note from this plea that a man cannot charge tenements which are not in his possession although he may speak of tenements which he had or was to have.

6. MARESCHAL *v.* LOVEL.

Forfeiture of marriage.

[Fergus le Mareschal] brought his writ of forfeiture of marriage against [Hugh the son and heir of Henry Lovel] and said that, whereas the wardship and the marriage of Hugh belonged to him, for the reason that [Henry] his father held of him a messuage and a carucate of land etc., by homage fealty and scutage etc., he being in peaceful seisin of the wardship of the body and the lands of Hugh during his minority, then tendered to him a suitable marriage without disparagement, to wit [Joan the daughter of James], in a certain place in the presence of A. B. and C., and this twice, and afterwards [this Hugh] when he was of full age intruded with force and arms upon these tenements against the will of him the said [Fergus], and took and carried away his goods and chattels to the value of fifty pounds, to wit wheat barley and oats to his damage etc. of one hundred pounds.

Herle defendit tort e force e le venir a force e armes e quant qe est encontre la pes nostre seygnur le roy e les damages etc. Et la ou il se pleint de ses byens e chateux etc., de ren copable, prest etc. E la forfeture de mariage nous responoms qe après la mort C. pere Jon, W. Lovel seisi la garde du cors J. e dona le mariage a Henri Lovel le qel Henri maria cesti J. a M. sa soer qe est hu ceo jour sa femme e demaundom jugement desicom il put aver son recoverir vers W. Lovel si vers nous cesti bref puisse user.

Frisq. Nous avom dit qe il tint de nous par services de chivaler. Par qels services tint il de H. ?

Herle. Nous avom mie mester a ceo respondre, qar cest bref gist entre gardeins a trier le dreit de la garde, mès nous sumes venuz en cort a excuser nostre tort e demaundom jugement.

Hervi a *Frisq.* Vous dites qe vous esteiez seisi de la garde du cors e ceo suppose vostre bref e a ceo vous responent e il dient qe H. Lovel fut seisi e dona lure mariage etc.

Frisq. Qe nous fumes seisi du cors taunqe a son age, prest etc.

Herle. Qe noun, prest etc.

Et sic ad patriam.

7. CORNWALL *v.* HACCUMBE.[1]

Ou le bref e le counte fut ben chalengé etc.

Deux soers ensemblement ove lour deux barouns porterent lour bref de dreit de garde vers Jon de C. e demanderent la garde du cors B. fyz e heir G. qe a eux appent par la reson qe le dit G. tint de eux certeynz tenementz par homage feauté e les services de vj souz e morust etc.

Toud. defendit e demanda jugement desicom il ne unt pas fet mencioun del escuage en le counte etc. e chalangea fortement par la moz.

Ber. ly ousta au drein, e puis

Toud. chalangea le bref pur ceo q'il demanderent com le dreit lour femmes e le bref voleit ' eo quod de eis tenuit,' la ou le bref dut aver dit ' eo quod de prefatis Alicia et Sarra tenuit.'

[1] A case from *Y* (fol. 258 v°) wrongly attributed to Michaelmas Term 4 Edw. II. It is evidently a case of Easter Term 3 Edw. II., of which other reports and the Record have been printed in that year (*Year Book Series*, iii. 97).

Herle denied tort and force and the coming with force and arms, and all that is against the peace of our lord the king, and the damages etc. And there where he complains of his goods and chattels etc. he says 'guilty of nothing,' ready etc. And about the forfeiture of marriage we answer that after the death of [Henry the father of Hugh Richard] Lovel seized the wardship of the body of [Hugh] and gave the marriage to one [Robert], which [Robert] married him to M. his sister, who is to-day his wife. We ask judgment seeing that he could have his recovery against [Richard] Lovel whether he can use this writ against us.

Friskeney. We have said that he held of us by knight's service. By what services did he hold of [Richard]?

Herle. We have no need to make answer to that; for this writ lies between guardians to try the right of wardship; but we are come into court to excuse our tort, and we ask judgment.

Stanton J. to *Friskeney.* You say that you are seised of the wardship of the body, and this your writ supposes; and to that they answer you and say that [Richard] Lovel was seised and gave the marriage to them etc.

Friskeney. That we were seised of the body till he was of full age. Ready etc.

Herle. That they were not, ready are we etc.

And so to the country.

7. CORNWALL *v.* HACCUMBE.

The writ and the count were well challenged.

Two sisters together with their two husbands brought their writ of right of wardship against John de C. and demanded the wardship of the body of B. the son and heir of G. which belongs to them for the reason that the said G. held certain tenements of them by homage fealty and the services of six shillings and died etc.

Toudeby defended and asked judgment, on the ground that they had not mentioned scutage in the count etc., and challenged the count vigorously on the wording.

Bereford C.J. ousted him at last, and then

Toudeby challenged the writ, because the husbands demanded in right of their wives, and the writ said 'on the ground that he held of them,' whereas the writ should have said 'on the ground that he held of the aforesaid Alice and Sarah.'

Ber. Si un homme tent de moy e de ma femme com le dreit ma femme joe entenke q'il tint de moy. (Par quei il furent chacé outre e puis vocherent a garraunt Peres Corbet.)

J. Denham. Voucher ne poez, qar vous fuistes le primer qe entrates après la mort nostre tenaunt e prest del averer.

Herle. Veez cy Peres Corbet qe presente est e garraunte.

Toud. Il ne fut unqes seisi en demene ne en services.

Il ne demoreient la, mès Peres alleggea priorité de feffement.

Et sic ad patriam.

8. THE WARDEN OF MERTON *v.* HUSÉ.[1]

Magister Johannes Wantyngton magister de scolers de la sale Mertone porta son bref de dreit de la garde vers A. de E. e demaunda la garde J. fyz e heir W. e dit qe la garde a ly appent par la resoun qe G. son pere qi heir il est tint de ly un mees e une carué de terre en N. par homage e par escuage e par feauté e par les services de ij souz e morust en son homage.

A. dit q'il tint de ly une carué de terre par homage e par escuage e par fealté par services etc. einz ceo q'il tint del mestre ou de nul de ses predecessours etc.

Herle. Nous dioms qe le dit G. pere l'enfaunt tint ceux mees e cele carué de terre de un Nicole de N. par les services avantditz le quel Nicole granta mesme les services au dit mestre e a ces successours a tous jours par qel grant le dit G. se attorna au dit mestre des ditz services par qel attornement il fut seisi de cest homage e de ses autres services, e morust en son homage.

Toud. E nous jugement desicom il unt conu q'il tint de nous plus tost qe de eux.

Ber. Qe respounez vous a la seisine Nicole ?

Toud. Nous n'avom mie a ceo a respoundre.

Ber. Dites autre chose ou nous dirroms.

Et fuerunt ad patriam super prioritate ipsius A. et predicti Nicholai.

[1] From *Y* (fol. 258 v°). This case is attributed to Michaelmas Term 3 Edw. II., but no such case appears in the other manuscripts of that term.

Bereford C.J. If a man hold of me and my wife as of the right of my wife, I think that he holds of me. (Therefore they were driven to answer further and then vouched Peter Corbet to warranty.)

J. Denham. You cannot vouch, for you were the first who entered after the death of our tenant and ready are we to aver it.

Herle. See here Peter Corbet, who is present and warrants.

Toudeby. He was never seised either in demesne or in service.[1]

They did not take their stand there; but Peter alleged priority of feoffment.

And so to the country.

8. THE WARDEN OF MERTON *v.* HUSÉ.

Master John of Waneting, master of the scholars of Merton Hall, brought his writ of right of wardship against [William Husé], and demanded the wardship of [Henry] the son and heir of [John], and said that the wardship belonged to him for the reason that [John] his father whose heir he is held of him a messuage and a carucate of land in N. by homage and scutage and by fealty, and by the services of two shillings of rent and died in his homage.

[*William Husé*] said that [John] held a carucate of land of him by homage and by scutage and by fealty, and by the services etc. before he held of the master or any of his predecessors etc.

Herle. We say that the said [John] the father of the infant held these messuages and this carucate of land of one Nicholas of N. by the services aforesaid, and this Nicholas granted the same services to the said master and his successors for ever, and upon this grant the said [John] attorned to the said master for the services aforesaid. By this attornment the master was seised of this homage and the other services, and the man died in the master's homage.

Toudeby. And we ask judgment on the ground that they have acknowledged that he held of us before he held of them.

Bereford C.J. What answer do you make to the seisin of Nicholas?

Toudeby. We have no need to make answer to that.

Bereford C.J. Say something further, or we will do so.

And an issue was joined upon the priority of the said [William] and the aforesaid Nicholas.

[1] As to this see Stat. Westm. I. c. 40.

The Record of the Case.

As transcribed in Y (fol. 260 r°).[1]

Willelmus Huse summonitus fuit ad respondendum magistro Iohanni de Wanetynge custodi domus scolariorum de Mertone Oxonie de placito quod reddat ei Georgeum filium et heredem Iohannis de Newenham cuius custodia ad ipsum custodem pertinet eo quod predictus Iohannes terram suam de eo tenuit per seruicium militare etc. Et unde idem custos dicit quod (cum predictus Iohannes de Newenham pater predicti Henrici tenuisset de ipso custode et domo sua predicta unum messuagium et unam uirgatam terre cum pertinenciis in Melkeham per homagium fidelitatem et seruicium decem solidorum per annum et secte faciende ad curiam ipsius custodis de tribus septimanis in tres septimanas et per scutagium etc. uidelicet, ad scutagium domini regis quadraginta solidorum cum acciderit quatuor denarios et ad plus plus et ad minus minus de quibus seruiciis idem custos fuit seisitus ut de iure domus sue predicte per manus predicti Iohannis de N. patris etc. tempore pacis tempore Edwardi regis patris regis nunc capiendo inde explecia ad ualenciam etc. et obiit in homagio suo et ea racione ad ipsum custodem pertinet) predictus Willelmus predictam custodiam Henrici iniuste deforciat. Et unde dicit quod deterioratus est et dampnum habet ad ualenciam etc.

Et Willelmus per attornatum suum uenit et defendit uim et iniuriam quando etc. et dicit quod custodia predicti Henrici ad ipsum Willelmum pertinet et non ad predictum custodem. Dicit enim quod predictus Iohannes pater predicti Henrici tenuit de quodam Nicholao de Kenecourt duo messuagia et sex acras terre cum pertinenciis in Milkeham per homagium et fidelitatem et seruicium duorum solidorum per annum et ad scutagium domini regis quadraginta solidorum cum acciderit nouem denarios et ad plus plus et ad minus minus de quibus seruiciis predictus Nicholaus fuit seisitus per manus predicti Iohannis patris etc. Et dicit quod idem Nicholaus postea homagium et seruicium eiusdem Iohannis concessit eidem Willelmo racione cuius concessionis predictus Iohannes pater etc. se attornauit eidem Willelmo etc. Et dicit quod predictus Iohannes pater etc. et antecessores sui prius tenuerunt predicta messuagia sex acras et dimidiam uirgatam terre cum pertinenciis in predicta uilla de Melkeham per predictum seruicium militare de predicto Nicholao cuius statum ipse habet et antecessoribus eiusdem Nicholai quam predicta messuagium et uirgatam terre cum pertinenciis in predicta uilla de predicto custode et domo etc. seu predecessoribus suis etc. Et de hoc ponit se super patriam. Et custos similiter.

Ideo preceptum est uicecomiti etc.

[1] The enrolment of the record has not been found. There happens to be a transcript of it in *Y* (fol. 260 r°).

Translation of the Record.

For the reference, see opposite.

William Husé was summoned to answer Master John of Wanetynge warden of the house of scholars of Merton at Oxford on a plea that he render to him George[1] the son and heir of John of Newenham the wardship of whom belongs to him the said warden on the ground that the aforesaid John held his land of him by knight service etc. And whereupon the same warden says that (whereas the aforesaid John of Newenham the father of the aforesaid Henry held of him the said warden and his house aforesaid one messuage and one virgate of land with the appurtenances in Melkeham[2] by homage fealty and the service of ten shillings a year and of doing suit to the court of him the said warden from three weeks to three weeks and by scutage etc. to wit for the lord king's scutage of forty shillings when it falls due four pence and for more more and for less less of which services the same warden was seised as of the right of his house aforesaid by the hands of the aforesaid John of Newenham the father etc. in time of peace in the time of king Edward the father of the king who now is, taking the profits thereof to the value etc. and he died in his homage, and for that reason the wardship belongs to him the said warden) the aforesaid William wrongfully deforces him of the aforesaid wardship of the aforesaid Henry. And whereupon he says that he is injured and has damage to the value etc.

And William comes by his attorney and denies tort and force when etc. and he says that the wardship of the aforesaid Henry belongs to him the said William, and not to the aforesaid warden ; for he says that the aforesaid John the father of the aforesaid Henry held of one Nicholas of Kenecourt two messuages and six acres of land with the appurtenances in Melkeham[2] by homage and fealty and the service of two shillings a year, and for the lord king's scutage of forty shillings when it should fall due nine pence and for more more and for less less, of which services the aforesaid Nicholas was seised by the hands of the aforesaid John the father etc. And he says that the same Nicholas afterwards granted the homage and service of the same John to the same William and by reason of this grant the aforesaid John the father etc. attorned to the same William etc. And he says that the aforesaid John the father etc. and his ancestors held the aforesaid messuages six acres and half a virgate of land with the appurtenances in the aforesaid town of Melkeham by the aforesaid knight's service of the aforesaid Nicholas, whose estate he has, and of the ancestors of the same Nicholas before they held the aforesaid messuage and virgate of land with the appurtenances in the aforesaid town of the aforesaid warden and his house etc. or his predecessors etc. And of this he puts himself upon the country. And the warden likewise.

Therefore the sheriff is ordered etc.

[1] He is called Henry elsewhere in the transcript of the Record.
[2] Mickleham near Leatherhead.

9. ANON.[1]

Ou le tendre du serment suffit pur la partie etc. pur dereigner sa dette etc.

Un A. porta son bref de dette vers B. e dit qe atort ly detint x livres e pur ceo atort qe la ou ly bailla touz ces chateux de C. a vendre pur l. livres les queux il devoit au counte de Warwyke pur arrerage de son acounte pur la quele le dit A. devint plegge e meinpernour e le dit B. graunta e se obliga par son escrit, e mist a la court, au dit B. qe s'il ne poeit les deners lever des dyz chateux q'il ly fut tenu a ly paier sanz delay de tant com il voleit jurrez[2] q'il ne leva point, issi qe le dit A. ne leva de ses bens qe xl livres etc.

Scrop. Il prent sa accion de un serment e il n'ad mie counté qe il fit le serment ne q'il est prest de fere le serment. Jugement.

Frisq. Après la vent des chateux nous vous tendimes de fere le serment etc. e vous refusastes, prest etc.

Scrop. Nostre excepcion si est au maveiz counte. Jugement etc.

Scrop (*justice*). Il vous dit q'il ne demora my en ly qe le serment ne ust este fet. Volez l'averement ? ou certeinement nous dirroms autre chose ; qel defaute poez vous assigner en ly la ou il tendy le serment e vous ne voliez recevere.

Scrop. Face ore le serment e nous le receveroms.

Hedon. Après la vent, nous vous tendimes, e prest etc.

Et in fine coactus fuit per curiam aliud dicere.

Scrop. Le fet fest en prisun, prest etc.

Et alii contrarium.

10. ANON.[3]

Ou deuz swites furent demandez de un mesme tenement.

Nota qe l'avowerie fut fete sur un priour par la reson q'il tient de lui un mees e ij carué de terre en C. par suite e autre service etc.

Laufar. Nous dioms qe un Johan seignur del maner de S. dona un mees e iij ferlinges de terre a un J. nostre predecessour in pure e perpetuele aumoigne, e ou il appele ij carues etc., ceo ne sunt qe iij ferlinges

[1] From *Y* (fol. 245 r°). [2] Apparently an error for 'jurer.' [3] From *Y* (fol. 157 v°). This case is attributed in the margin to Hilary Term of 4 Edw. II.

9. ANON.

Where the tender of an oath etc. was sufficient for the party etc. to deraign his debt etc.

One A. brought his writ of debt against B. and said that B. wrongfully detained ten pounds from him, and wrongfully because—whereas B. delivered to him all his chattels at C., to sell for fifty pounds which B. owed to the earl of Warwick for arrears of his account and for which the said A. had become his pledge and mainpernor, and whereas the said B. granted and bound himself by his writing (which A. put before the court) to the said [A.] that if A. could not raise the money from the said chattels, then B. would be bound to pay to him without delay as much as he would swear that he could not raise—so it was that the said A. raised from the sale of his goods forty pounds only.

Scrope. He bases his action on an oath, and he has not counted that he made the oath nor that he is ready to make the oath. We ask judgment.

Friskeney. After the sale of the chattels we made an offer to you to take the oath etc., and you refused it. Ready etc.

Scrope. Our exception is to the bad count. We ask judgment etc.

Scrope J. He tells you that it was not through him that the oath was not made. Will you have his averment? If not, we will certainly say something more. What default can you assign to him, seeing that he tendered the oath and you would not receive it?

Scrope. Make the oath now and we will receive it.

Hedon. After the sale we tendered to you etc.; and ready are we etc.

And in the end *Scrope* was compelled by the court to say something else.

Scrope. The deed was made while we were in prison. Ready etc.

And the others to the contrary.

10. ANON.

Where two suits were demanded from one and the same tenement.

Note. An avowry was made upon a prior for the reason that the prior held of the avowant one messuage and two carucates of land in C. by suit and other services etc.

Laufare. We say that one John lord of the manor of S. gave a messuage and three furlongs of land to one J. our predecessor in pure and perpetual alms; and what he calls two carucates etc. are only three

de terre. Nous dioms q'il sunt del maner S. qe est tenuz del avowant par cele suite, de quele suite il est seisi hui ceo jour par mi la main Johan etc. Et demandoms jugement etc.

Ber. Voet il aver deus suites de un mesme tenement? (*quasi diceret,* Noun).

Mugg. Qe nous ne sumes mie seisi par mi la main Johan, prest etc.

Et alii contrarium.

11. NOTES.

(*a*) Nota[1] qe solom Sire Hervi de Stauntone qe un *quare eiecit infra terminum* le pleintyf recovera tantsoulement ses damages en cas ou son terme est passé. E si le terme ne seit pas fini il recovera son terme de tens avenir etc. E a ceo assentirent *Brabazoun Roubury* e *Hert.* Hoc idem quesiui de *Mugg.* et *Wallynford* et dixerunt quod haberet terminum suum aretro et dampnum etc.

(*b*) Nota[2] en un *cui in uita* le tenant dit qe la femme fut seisi après le deces le baron e demanda jugement si par cestui bref etc.

Hervy. Coment seisi? qar ele poet aver entré com disseiseresce, e pus lez tenemenz estre rescoveré par le disseisi etc., par quei *Lauf.* dites altre chose.

Lauf. Qe le baron ne lessa point, prest etc.

Et alii contrarium etc.

(*c*) Nota[3] ou un tenant a terme de vie fust enpledé e fist defaute après defaute par quei les tenemenz furent en point de estre perduz, vient une femme e dist qe la reversion de mesme les tenemenz appendeit a lui e pria estre resceu etc. E fust resceu e rendit al demandant sa demande.

Ber. Qi durra les deners au roi?

Hedon allegga poverté pur la femme.

[1] From *Y* (fol. 251 r°). [2] From *Y* (fol. 97 r°). [3] From *Y* (fol. 97 r°).

furlongs of land. We say that these are of the manor of S., which is held of the avowant by this suit ; and he is seised of this suit this very day by the hand of John etc. We ask judgment etc.

BEREFORD C.J. Does he wish to have two suits from one and the same tenement ? (*as if to say*, No).

Miggeley. That we are not seised by the hand of John, ready etc.

And the others to the contrary.

11. NOTES.

(*a*) *Note*, that according to Sir Hervey of Stanton in a *quare eiecit infra terminum* where the term is past the plaintiff will recover his damages only. And if the term be not completed, he will recover his term for the period to come etc. To this BRABAZON C.J., ROUBERY J., and *Hertilpool* assented. I asked the same question of *Miggeley* and *Wallingford*, and they said that he would have his term in arrear and his damages etc.

(*b*) *Note*. In a *cui in uita* the tenant said that the woman was seised after the death of the husband, and he asked judgment whether by this writ etc.

STANTON J. How was she seised ? for she might have entered as disseiseress, and afterwards it might be that the tenements were recovered by the disseisee etc. ; therefore, *Laufare*, say something else.

Laufare. That the husband did not lease, ready etc.

And the others to the contrary.

(*c*) *Note*. A tenant for a term of life was impleaded and made default after default whereby the tenements were on the point of being lost. A woman came and said that the reversion of the same tenements belonged to her, and she prayed to be received etc. She was received and rendered to the demandant his demand.

BEREFORD C.J. Who will give the king his pence?

Hedon alleged poverty for the woman.

THE REPORTS[1] OF 4 EDW. II. IN THE HALE MS. 137 (2).

Reading v. *Stoke*.[2] En un bref de meen demaundé fust ceo qe le tenaunt avoit del acquitaunce et il moustra fyn par quele sa miere qi heir etc. lui rendi etc. a tenir de lui et obligea etc. al acquitaunce. L'autre dist qe son piere en[3] tient tot l'eritage sa miere par la ley d'Engleterre et il est seisi de voz[4] services et nous n'avoms unqes[5] rien par descente de nostre miere. Et demaunda jugement si vivant etc. puissetz acquiter etc. Et dictum fuit per Berr. qe vivant le tenant par la ley etc.[6] il ne serra[7] pas chacé d'aquiter[8] etc. par nul fait etc. si rien ne lui fust descendu etc. ; par seisine des services il ne deit acquiter pur ceo qe le tenaunt par la ley etc. en est seisi etc.

Delegold v. *Caluele*.[9] En un bref de meen le meen demaunda jugement, desicome la tenaunte tient en dowere del dowement R. son baroun a qi le meen est tot estrange, si cesti bref vers lui y gise. La femme dyt qe son baroun fust seisi de ceux tenementz etc. et des autres[10] des qeux il enfeffa un P. issint q'après la mort son baroun P. lui assigna ceux tenementz a tenir en noun de dowere etc. et relessa[11] a la femme tot son dreit[12] a tenir de chief seignurages de fee et issint sumes vostre tenaunt et sovent avoms tendu a vous les services, jugement etc. Et il demaunda jugement desicome ele fust estraunge, et ad hoc consesserunt[13] justices q'en tiel cas avaunt attornement il covendroit a chief seignur avower sour son tenaunt ou son heir par my qi mayns il ad esté seisi etc.

Daniel v. *Fitzralph*.[14] En un bref de meen l'aquitaunce fust demaundé de ceo qe nostre seignur le roi lui demaunda resnable eyde a sa fille marier. L'autre demaunda ceo q'il avoit de lui lier al acquitaunce

[1] The following abridged reports from *Z* are here collated with those in a manuscript at the British Museum (Harl. MS. 739), which has hitherto been overlooked. It is designated in the footnotes by the letters *ZZ*. [2] See vol. vi. p. 71. [3] *Om.* en *ZZ*. [4] cez *ZZ*. [5] unqore *ZZ*. [6] d'Engleterre *ZZ*. [7] purra *ZZ*. [8] de ly acquiter *ZZ*. [9] See p. 75 above. [10] *Ins.* tenementz *ZZ*. [11] rendi *ZZ*. [12] dowere *ZZ*. [13] consentirent *ZZ*. [14] See vol. vi. p. 177.

THE REPORTS[1] OF 4 EDW. II. IN THE HALE MS. 137 (2).

Reading v. *Stoke.* On a writ of mesne it was asked what the tenant had in proof of the acquittance ; and the tenant showed a fine by which the mesne's mother, whose heir etc. the mesne was, rendered to the tenant etc. to hold of her, and bound herself etc. to the acquittance. The mesne said that his father held all the inheritance of his mother by the law of England, and that he was seised of the tenant's services, and that as yet he had nothing by descent from his mother. He asked judgment whether in the lifetime etc. he could acquit the tenant etc. It was stated by Bereford C.J. that in the lifetime of the tenant by the law etc. the mesne should not be driven by any deed etc. to acquit etc. if nothing had descended to him etc. ; and by reason of seisine of services the mesne was not bound to acquit the tenant, for the tenant by the law etc. was seised etc.

Delegold v. *Calvele.* On a writ of mesne the mesne asked judgment whether this writ lay against him, seeing that the tenant held in dower of the endowment of Richard [Delegold] her husband to whom the mesne is a total stranger. The woman said that her husband was seised of these tenements etc. and of other tenements of which he enfeoffed one [Richard Davy] so that after the death of her husband, [Richard Davy] assigned these tenements to her to hold in the name of dower etc., and [afterwards he] released to her all his right in them to hold of the chief lords of the fee ; and so she was tenant of the mesne ; and she had often tendered the services to him. She asked judgment etc. And the mesne asked judgment on the ground that she was a stranger. As regards this the justices agreed, for in such a case before attornment it would be necessary for the chief lord to avow upon his tenant or his heir by whose hands he has been seised etc.

Daniel v. *Fitzralph.* On a writ of mesne an acquittance was demanded of this, that our lord the king demanded from the tenant a rightful aid for the marriage of his daughter. The mesne asked what

[1] See note 1 opposite.

et il mist avaunt son fait qe voleit[1] qe lui dust aquiter devers totes gentz *de omnibus seruiciis et accionibus quibuscunque* ; et respoundu fust qe ceo ne fust pas services issaunt de fraunctenement einz une avauntage qe accrest de seignurie la quele chose ne chiet[2] pas en acquitaunce, jugement etc. Et dictum fuit per iusticiarios qe ceo ne fust fors[3] un appruement des services auxi com escuage quant il court, et unqore homme ne poet escuage lever saunz graunt le roi. Et fust agardé q'il lui acquitast.

Cuius contrarium uidebatur anno xxxiiij regis Edwardi filii regis Henrici,[4] ou fust agardé q'il ne lui dust aquiter, quia non fuit seruicium exiens de tenementis etc.

Adam v. *Boyland.*[5] En un *iurata de utrum* porté devers une persone qe dyt, qe autrefoithe la juré passa en sa nature qe le demaundaunt porta vers le predecessour le tenaunt, ou fust trové qe ceo fust fraunche aumoigne etc. Et demaunda[6] si juré sour juré etc. ; et il dyt q'en cest juré ne fust le patron ne le ordinarie priez en eyde ; et c'est un bref de dreit de parsone etc. en lieu de touz autres breves, et sauntz eux ne poiet le dreit estre trié, par qei il n'entendi mye[7] saunz ceo q'il puissent moustrer q'en la primer juré le patron et l'ordinarie estre prietz en eyde et[8] severez par agard de cest bref q'est a nous doné en lieu de bref de dreit deyve estre barré etc.

Anon. En un bref de fourme de doun en le *descendere* le tenaunt dyt qe le demaundaunt duraunt son noun age ne dust estre respoundu, qar son auncestre ne murust pas seisi ; en tiel cas cesti bref lui est doné en lieu de bref de dreit. L'autre alleggea statutum qe voet[9] *quod statim post mortem eorum quibus* etc. et il[10] dust attendre son age ceo serreit encountre statut. Le tenaunt dyt qe son auncestre etc. lui enfeffa par sa chartre et obligea etc. en quel cas il covendreit qe le fait fusse conue qe s'il avoit par descente il serreit barré et si noun il covendreit pas[11] pur la possibilité qe lui poet descendre etc.

Et super hoc ad iudicium etc.

Anon.[12] Un bref de fourme de doun en le *reuerti* fust agardé bon qe voleit : ' Et que post mortem predictorum A. et B. et C. filii et heredis predictorum A. et B. predicto etc. reuerti debet,' ou le fitz fust entré en religioun Et fust chalengé en ceo cas qe le mortdauncestre en

[1] dit *ZZ.* [2] git *ZZ.* [3] forsqe *ZZ.* [4] *Year Books* (Rolls Series), 33–35 Edw. I, p. 245. [5] See vol. iv. p. 36. [6] *Ins.* jugement *ZZ.* [7] pas *ZZ.* [8] ou *ZZ.* [9] *Om.* qe voet *ZZ.* [10] s'il *ZZ.* [11] qe *ZZ.* [12] See vol. ii. p. 153.

the tenant had to bind him to the acquittance. The tenant put forward the mesne's deed which stated that he ought to acquit him against all men 'of all services and actions whatsoever.' It was answered that this was not a case of services issuing out of a frank tenement; but an advantage which accrued to the lord and it was not a matter for which acquittance lay. He asked judgment etc. The justices said that this was only a profit arising from the services just as a scutage when it ran; and a man could never levy a scutage without the king's grant. It was awarded that he should acquit him.

The contrary of this appears in 34 Edw. I. where it was awarded that the mesne was not bound to acquit him, because this was not a service issuing from the tenements etc.

Adam v. *Boyland.* A *iurata de utrum* was brought against a parson, who said that heretofore a jury which the demandant brought against the predecessor of the tenant passed in its nature, and it was found that this land was frank almoign etc.[1] He asked judgment whether a jury upon a jury should pass. The demandant said that in that jury neither the patron nor the ordinary was prayed in aid; and this is a parson's writ of right etc. in lieu of all other writs; and without [this writ] the right could not be tried. Therefore he did not think that, unless they could show that in the first jury the patron and the ordinary were prayed in aid and severed by award, he ought to be barred etc. from this writ which was given to him in lieu of a writ of right.

Anon. On a writ of formedon in the descender the tenant said that the demandant during his nonage ought not to be answered for his ancestor did not die seised, and in such a case this writ is given to him instead of a writ of right. The demandant put forward the statute [2] which says that 'immediately after the death of those to whom etc.'; and said that if he had to await his age, it would be contrary to the statute. The tenant said that the demandant's ancestor etc. enfeoffed him by his charter and bound himself etc.; and that in this case it was necessary that the deed should be acknowledged, for if he had [assets] by descent he would be barred; and if not, it was still necessary for the possibility that assets might descend to him etc.

And upon this to judgment etc.

Anon. A writ of formedon in the reverter which said:—'and which after the death of the aforesaid A. and B. and C., the son and heir of the aforesaid A. and B. to the aforesaid [D.] etc. ought to revert,' where the son had entered religion, was awarded good. And it was challenged

[1] That is to say, the jury gave a verdict on the question formulated in the original writ. See vol. iv. p. 36.

[2] Stat. Westm. II. c. 1.

tiel cas feet mencioun ' die quo habitum etc.' et dona tiel bref : ' et que post mortem predictorum A. et B. et professionem C. filii et heredis etc.' Et non allocatur etc.

Ingelose v. *Spytling*.[1] Nota qe de ij joynt feffetz l'un relessa al autre et a cel temps il ne fust qe de xvj aunz et l'autre joynt feffé aliena l'entier, et un moys après morust. Celui[2] q'avoit relessé dedeinz age entra la tierce symeigne après ; le feffé lui ousta ; il porta l'assise ; le tenaunt pleda al assise qe nul tort etc. L'assise dyt *ut supra* et prie[3] eyde etc. Le tenaunt demaunda jugement desicome il ad relesse etc. en quel il serreit a s'accioun etc. Les justices dysoient qe tut fist il un relees il ne fist pas feffement. Et propter hoc non debet diffugere ad aliam accionem ; et agarderent a lui seisine de terre de la moité.

Et quidam dicunt qe quant un enfaunt deynz age aliene q'il poet aver l'assise deinz les xiiij aunz saunz entrer et après les xiiij aunz[4] il ne peut pas user l'assise saunz entrer etc. Et ideo quere.

Berneval v. *Chavent*.[5] En un assise de novel disseisine le tenaunt dist q'un fyn se leva entre le cosyn le pleintif et luy par quel fyn il fust eynz, et s'il fust empledé d'un estraunge etc. Le pleintif dist qil ne fust pas son heir, prest etc. Le tenaunt encountre ; et sour ceo furent ajournez en baunk.

Berr. dyt qe le poynt sour quele il furent descenduz si fust hors de poynt d'assise ; et tut fust il averré, il ne serveroit de rien ; qar mès[6] trové serreit q'il ne fust pas heir, unqore ne[7] fust le pleintif forqe al assise etc.

Esthall v. *Penbridge*.[8] En un assise de novel disseisin porté devers ij, l'un dyt qe l'autrefoithes si porta il une assise vers lui de mesme les tenementz, ou il pleda al assise ou trové fust q'il ne lui disseisi pas, et demaundoms jugement desicome autrefoithes etc. l'assise etc. saunz moustrer title de fraunctenement puy[9] etc. et il dyt coment qe autrefoithes mespreismes nostre bref issint qe nous n'avioms pas disseisour en nostre bref, ore avoms nous disseisour et tenaunt, jugement etc. Et pur ceo qe fust trové autrefoithes etc. et il ne moustre pas title puis etc. fust agardé q'il ne prist rien etc.

[1] See vol. iv. p. 140. [2] L'enfaunt *ZZ*. [3] pria *ZZ*. [4] *For* saunz . . . aunz, *subs.* mès après *ZZ*. [5] See vol. iv. p. 126. [6] mesqe *ZZ*. [7] *Om.* ne *ZZ*. [8] See vol. iv. p. 34. [9] pus *ZZ*.

in this case because the mortdancestor in a like case makes mention of the day on which he assumed the habit etc. They gave this writ :— 'and which after the death of the aforesaid A. and B. and the profession of C. the son and heir etc.' And the exception was not allowed etc.

Ingelose v. *Spytling.* Note that one of two joint feoffees released to the other, and at the time he was only sixteen years of age. The other joint feoffee alienated the entirety, and died a month afterwards. The feoffee who had released when he was within age entered in the third week after the death of the other. The feoffee [1] ousted him. The feoffee who had released brought the assize. The tenant pleaded to the assize that no tort etc. [had he done]. The assize found (as above), and prayed aid [of the justices]. The tenant asked judgment, on the ground that the plaintiff had released etc., and therefore he should be put to his action etc. The justices said that although he had made a release he had not made a feoffment ; and on that account he ought not to be put to another action ; and they awarded to him seisin of a moiety of the land.

And some say that when an infant within age alienates he can have the assize within fourteen years without entry ; and after fourteen years, he cannot use the assize without entry etc. Query.

Berneval v. *Chavent.* In an assize of novel disseisin the tenant said that a fine levied between the cousin of the plaintiff and [her]self, and that by this fine he was 'in,' and if he were impleaded by a stranger etc. The plaintiff said that he was not the heir of his cousin, and ready was he to aver it. The tenant to the contrary, and upon this they were adjourned into the Bench.

Bereford C.J. said that the point upon which they had come before him was outside the points of the assize, and even if it were averred it would be of no service to the plaintiff ; for if it were found that he was not the heir, the plaintiff would still only be at the assize etc.

Esthall v. *Penbridge.* In an assize of novel disseisin brought against two, one said that heretofore the plaintiffs brought the assize against him of the same tenements, and he pleaded to the assize, and it was found that he did not disseise them. [He] asked judgment seeing that heretofore etc. the assize etc. unless they showed a title of frank tenement of a later date. The plaintiffs said that they mistook their writ heretofore, so that [they] had no disseisor in their writ, now [they] had a disseisor and tenant. They asked judgment etc. And because it was found heretofore etc. and they showed no title of later date etc., it was awarded that they take nothing etc.

[1] To whom the dead man had alienated.

Stapleford v. *Barbot*.[1] En un assise[2] d'ael le tenaunt fist defaute. Sourvynt sa femme qe ne fust pas nomé en le bref et dyt q'ele fust joynt feffé ove son baroun et de ceo moustra fyn qe ceo tesmoigna et pria d'estre resceu etc. et fuit obiectum qe l'estatut ne la eyde pas si noun en cas ou il pout pleder secundum formam breuis[3] quod etc. Pur ceo q'il mist avaunt fyn de recorde ele fust resceu.

Secus est si ele eust mys avaunt chartre qe poet estre dedyt, qar en ceo cas la ley deit entendre son estat par vertue de[4] fyn etc.

Bule v. *Baker*.[5] En un *nuper obiit* la une seor allegea qe puis la mort celui de qi seisine etc. entra un R. com fitz et heir et seisi fust et c'est un bref de possessioun etc. L'autre dyt qe cest excepcion ne fust pas pleine desicome ele assigna qe l'estat, qe sa seor en ad ore, est descendu par mesme l'auncestre de qi mort etc. ; et cesti bref gist entre privetz etc. Et s'il fust ousté de cest bref il serreit mys a son bref de dreit qe serreit encountre ley et ne entendi pas saunz qe ele[6] voudra dire qe ele mourust seisi, qe a tiel excepcion serra ele resceu. Et alleggé fust q'en mordancestre l'excepcion serreit assetz bon, a dire qe puys la mort celui de qi mort etc. si entra un tiel come fitz et heir et fust plus tard seisi ; jugement de bref. Et negabitur[7] similitudo, qe mordauncestre gist entre estraunges et quant le bref est abatu par tiel excepcion si poet demaundaunt aver autre bref de possession ou bref d'entré solum son cas, mès en ceo cas il n'averet autre bref si cesti fust abatu par tiel excepcion qe bref de dreit, par qei fust le bref agardé bon, saunz ceo qe ele deist q'il murust seisi etc.

Russel v. *Le Lung de la Sele*.[8] Quatre parceners porterent lour[9] *cui in uita* vers un estraunge et counterent de la seisine lour seor qe fust d'autre ventre et le tenaunt allegea coment un S. fust seisi de mesme[10] ceux tenementz et prist femme un A. de quele issist un Johan et Paulyne de qi seisine etc. A. mourust. S. prist autre femme, de qi isserent ceux q'ore demaundent. S. mourust et Johan entra com fitz et heir et mourust saunz heir de son corps, par qei Paulyne entra come seor et heir pur ceo q'ele fust de l'entier saunke. Et demaunda jugement si ceux

[1] See vol. iv. p. 85. [2] bref *ZZ*. [3] *Ins.* etc. *ZZ*. [4] *Ins.* la *ZZ*. [5] See p. 88 above. [6] *Ins.* ceo *ZZ*. [7] The future is sometimes used for the imperfect indicative in these MSS. [8] This case is enrolled in Michaelmas term 5 Edw. II. The reports will be printed among those of that term, though in some manuscripts the case occurs among the reports of Trinity term, 4 Edw. II. [9] un *ZZ*. [10] *Om.* mesme *ZZ*.

Stapleford v. *Bardolf*. On a writ of ael the tenant made default. His wife, who was not named in the writ, intervened, and said that she was jointly enfeoffed with her husband. She showed a fine which witnessed this, and prayed to be received etc. It was objected that the statute[1] did not help her save in a case where [she] could plead according to the form of the writ etc. which etc.[2] She was received because she put forward a fine which is of record.

It would be otherwise if she had put forward a charter which could be denied; for in the present case the law ought to extend to her estate by virtue of the fine etc.

Bule v. *Baker*. On a *nuper obiit* one sister alleged that after the death of him of whose seisin etc. one Richard entered as son and heir and was seised, and this is a writ of possession etc. The other said that this exception was not full, because she has set out that the estate which her sister now has therein, has come to her by descent from the same ancestor, of whose death etc., and this writ lies between privies etc. If she were ousted from this writ she would be put to her writ of right, which would be contrary to justice; and she did not think that unless her sister were willing to say that [Richard] died seised, she ought to be received to such an exception. And it was alleged (for the tenant) that in the mortdancestor the exception would be good enough, that is to say, 'that after the death of him on whose death etc. a certain person entered as son and heir and was afterwards seised.' She asked judgment of the writ. The similarity was denied, for the mortdancestor lies between strangers, and when the writ of mortdancestor is abated by such an exception, the demandant can have another writ of possession or a writ of entry according to the facts of the case; but in this case the demandant would have no other writ if it were abated by this exception, save the writ of right. Therefore the writ was awarded good unless the tenant should say that Richard died seised etc.

Russel v. *Le Lung de la Sele*. Four parceners brought their *cui in uita* against a stranger and counted of the seisin of their sister [Pauline] who was of another venter and the tenant alleged that one Simon was seised of these same tenements and took to wife one Alice from whom issued one John and [also] Pauline of whose seisin etc. Alice died. Simon took another wife from whom issued those who now demand. Simon died and John entered as son and heir, and died without an heir of his body, whereupon Pauline entered as sister and heiress because she was of the whole blood. The tenant asked judgment whether they who are

[1] Stat. Westm. II. c. 3.

[2] That is to say, which she could not do because she was not named in the writ.

qe sont de demi saunke poient rienz[1] de la seisine P. demaunder. Et[2] demaunda jugement desicom il ne poet assigner nul heir plus procheyn si etc. Et dictum fuit que ceo serreit plus tost eschete, qe ceux n'averont rienz ; qar commune ley est[3] qe quant seors serront enheritez qe touz deivent departier l'heritage, et ne mye[4] aver l'entier, et puis de luy descender[5] a lez[6] autres seors *ut hic* ; par qei heritage un foithe descendu en l'entier saunke demurra en cel saunke ; et si cel saunke defaut unqore il ne descendra myes,[7] resortera en le dreit saunke par qei etc. Et dictum fuit quod si S. n'ust eu nul fitz qe touz[8] deussent departir l'eritage lour piere, pur ceo qe touz sont del entier saunke a lour piere. Et quere si Paulyne eust purchacé tenementz si les heirs[9] seors de son purchace serreint heirs ou noun.[10]

Bydyke v. *Kilburn*.[11] En un *cui in uita* le tenaunt dyt q'il entra par jugement rendu sour defaute après defaute en le *cessauit* et dyt coment le baroun et ceste femme tyndrent de lui certain tenementz et lesserent les tenementz giser freches par quei etc. La femme pria q'il moustra son dreit solum le[12] premer bref et il dyt q'il n'avoit pas mester, qar la femme ne fust pas en tiel cas eydé par statut, qar statut ne doune pas le *cui in uita* si noun en cas ou tenementz sont perduz par defaute par bref a la commune ley, mès cest un bref doné par ley especial qe voet qe[13] si le tenaunt ne viegne avaunt jugement qe les tenementz soient encorutz a touz jours. Et d'autrepart pur ceo qe nous sumes homme de religion enqueste fust pris sur[14] la collusioun ou trové fust q'il tiendrent de nous et qe les tenementz giserent freches par ij aunz etc. Et pur ceo qe le baroun perdy par defaute et l'enqueste ne fust qe de office, fust agardé q'il moustrast son dreit solum etc. Et *quere* in hoc casu si le premer bref vendra en court par bref de la chauncelrie auxi[15] del tenaunt q'ad recoveri par defaut etc.

Ardern v. *Whelton*.[16] En un *cui in uita* le demaundaunt[17] clama[18] par title de doun etc. Le tenaunt dyt qe par le feffement celui ne poet il rien clamer, qar autrefoithe si portames nous une assise de novele disseisine vers vous de mesme les tenementz ou vous deistes qe vous n'aviez nul tort fait einz fustes entré par feffement mesme celui par qi doun vous ore clamez ou fust trové qe vous nous disseissastez et qe vous

[1] *Om.* rienz *ZZ*. [2] L'altre *ZZ*. [3] veut *ZZ*. [4] *Ins.* l'un *ZZ*. [5] descend' *Z*. [6] *Om.* a lez *Z*. [7] *Ins.* mès *ZZ*. [8] *Ins.* les soers *ZZ*. [9] *Om.* heirs *ZZ*. [10] *For* heirs ou non *subs.* enheritez etc. *ZZ*. [11] See p. 39 above. [12] lour *ZZ*. [13] *Om.* qe *ZZ*. [14] de *ZZ*. [15] auxicom *ZZ*. [16] See vol. iv. p. 45. [17] tenaunt *ZZ*. [18] demaunda *ZZ*.

of the half blood can demand anything on the seisin of Pauline. And the others asked judgment on the ground that he could not assign any nearer heir, whether etc. And it was said that this ought rather to be an escheat than that they should have anything, for the common law is that when sisters inherit, they should all share the inheritance, and one should not have the entirety, and then the entirety should not descend from that one sister to the other sisters (as here).[1] Therefore an inheritance which has once descended in the whole blood will remain in that blood; and if that blood fails, still it will not descend, but it will resort in the right blood, wherefore etc. And it was said that if Simon had not had a son all the sisters ought to have shared the inheritance of their father, for they are all of the whole blood to their father. *Query.* If Pauline had purchased tenements would the sisters be heirs or not of her purchase?

Bydyke v. *Kilburn.* On a *cui in uita* the tenant said that she entered by judgment rendered upon a default after a default on a *cessauit*; and she said how the husband and this woman held of her certain tenements, and allowed them to lie fallow, wherefore etc. The [plaintiff] prayed that she would show her right according to the first writ; and she said that she had no need to do so, for the [plaintiff] was not in such a case as this aided by the statute, for the statute gives the *cui in uita* only in a case where the tenements are lost by default by a writ at common law; but this writ is given by a special law which says that if the tenant do not come before judgment the tenements are lost forever. Besides, because we are persons of religion an inquest was taken upon the collusion and it was found that they held of us, and that the tenements lay fallow for two years etc. And because the husband lost by default and the inquest was *de officio* only it was awarded that she show her right according to the first writ. *Quere* in this case whether the first writ should come into court by a writ of the chancery [at the suit] of the tenant who recovered by default etc.[2]

Ardern v. *Whelton.* On a *cui in uita* the demandant claimed by title of gift etc. The tenant said that by the feoffment the demandant could claim nothing:—for heretofore we brought an assize of novel disseisin against you of the same tenements, and you said that you had done no tort, but had entered by the feoffment of the same person by whose gift you now claim, and it was found that you disseised us and

[1] 'As here claimed' seems to be the meaning.

[2] The text in both manuscripts seems to be obscure here. See, with reference to it, the third paragraph on p. 45.

n'avetz rien del feffement celui ; et demaundoms jugement si a ore pussetz par le doune celui etc. Et pur ceo qe verdist d'assise eust esté assetz bone etc.

Anon. En un *cui in uita* le tenaunt allegea noun-tenure, pur ceo qe une femme porta bref de dowere devers lui etc. ou il rendi etc. Et le demaundaunt tendi d'averer q'il fust pleinement tenaunt jour etc. et qe la femme ne fust pas seisi par execucioun de cel jugement. Et dyt fust par les justices qe la court fut ascerté del rendre, et la seisine la femme ne fust pas dedyt ; en quel cas la court entende[1] de pus q'ele eie seisine qe[2] c'est par vertue de cel jugement ou il covent qe la partie moustre qu'el est seisi par autre title si ele voille meyntenir son bref etc.

Nota q'en un *cui in uita* le tenaunt traversa le lees faite par le baroun et a ceo fust resceu.

Cretynge v. *Wynthorp.*[3] En un bref d'entré en les queux le tenaunt n'avoit entré si noun puys le lees qe le demaundaunt fist a un M. a terme qe passé est, et le tenaunt demaunda ceo q'il avoit du lees et il mist avaunt un escript endenté etc. Et le tenaunt dyt q'il lessa les tenementz a M. en fee simple et veyez cy sa chartre qi ceo[4] tesmoigne et demaundoms jugement si encountre son fait demene peut il tiel bref user. Et pur ceo qe le tenaunt ne se peut faire privé a M., a qi la chartre fust fait, par assignement ne en autre manere, fust agardé qe le demaundaunt n'avoit mestre a respondre al fait q'en mayn d'estraunge fust alleggé.

Et dictum fuit ibi, qe si la chartre eust esté fait en la seisine M. ele eust auxi bien barré en la mayn d'estraunge come de privé.

Leghton v. *Hegham.*[5] Un homme et sa femme porterent un bref d'entré *ad terminum qui preteriit* en le *post.* Et fust le bref tiel ' Et que post terminum illum ad prefatos le baroun et sa femme . . . reuerti debent.' Et pur ceo qe la reversioun est en le baroun[6] auxi come descente, et si descente eust esté fait al baroun le count eust esté abatu. Et hac racione cassabitur breue.

Contrarium[7] uidebatur anno xiiij en un bref de fourme de doun en le *reuerti.*

[1] entendy *ZZ.* [2] de *Z*, qe *ZZ.* [3] See p. 37 above. [4] *Om.* ceo *ZZ.*
[5] See vol. vi. p. 41. [6] dreit *ZZ.* [7] *Ins.* cuius *ZZ.*

that you had nothing by her feoffment. We ask judgment whether you can now by her gift claim etc. And because the verdict of the assize would have been sufficiently good etc.[1]

Anon. On a *cui in uita* the tenant alleged non-tenure because a woman brought a writ of dower against him etc., whereon he rendered etc. The demandant offered to aver that the tenant was fully tenant on the day [when the writ was purchased] and that the woman was not seised by execution of the judgment [on the writ of dower]. And it was said by the justices that the court was satisfied of the render; and the seisin of the woman was not denied. And in this case the court thinks, since she has seisin, that this is by virtue of the judgment, and it is necessary that the demandant should show that the woman is seised by some other title if he wishes to maintain his writ.

Note. In a *cui in uita* the tenant traversed the lease made by the husband, and he was received to do this.

Cretinge v. *Wynthorp.* On a writ of entry into which the tenant had not entry save after the lease which the demandant made to one Martin for a term which is past, the tenant asked what the demandant had of the lease. The demandant put forward a writing indented etc. The tenant said that he demised the tenements to Martin in fee simple:—and see here his charter which witnesses this. We ask judgment whether against his own deed he can use this writ. And because the tenant could not make himself privy to Martin to whom the charter was made, either by assignment or in any other way, it was awarded that the demandant had no need to answer the deed which was alleged against him in the hands of a stranger.

It was said that if the charter had been made when Martin was seised it would have been as much a bar in the hands of a stranger as in those of a privy.

Leghton v. *Hegham.* A man and his wife brought a writ of entry *ad terminum qui preteriit* in the *post.* And the writ said: 'and which after that term ought to revert to the aforesaid husband and his wife.' And because the reversion is in the right just as much as the descent, and if the descent had been made to the husband, the count would have been abated, therefore this writ was quashed.

The contrary of this was seen in the fourteenth year in a writ of formedon in the reverter.

[1] The full report of this case in vol. iv. pp. 46, 47, should be consulted.

Horkesley v. *Power*.[1] En un bref d'entré le tenaunt allegea joynt feffement et myst avaunt chartre de pusné date qe le bref ne fust, par qey agardé fust q'il dist autre chose. Et il dyt qe jour de bref purchacé si fust un H.[2] tenaunt et puys enfeffa le tenaunt et sa femme et issint tenoms joyntment. Et ibi dictum fuit qe si le tenaunt[3] eust purchacé a lui mesme puys le purchaz du bref, qe le bref eust esté assetz bon, qar quant le bref est purchacé sur celui qe n'est pas tenaunt et il purchace les tenementz après il fait le bref le demaundaunt bon etc.

Tony v. *Conduit* (1).[4] En un bref d'entré porté devers ij joynt feffetz l'un fist defaute après defaute par qei etc. Al jour del grant *Cape* etc. le demaundaunt pria seisine de terre en dreit de la moité etc. et le tenaunt dist q'il est tenaunt del entier et fust jour de bref purchacé et prest est a respoundre del entier. Le demaundaunt *ut supra*, et tendist d'averer q'ils furent joyntenauntz auxi come il supposa par son bref.

Ber. Voletz counter devers lui ?

Le demaundaunt. En droit de la moité nous voloms counter devers lui ; et en droit de l'autre moité nous prioms seisine de terre.

Ber. N'est il en court prest a respoundre del entier et tenaunt del entier, auxi come vous supposez par vostre bref, qe vous portez devers eux auxi come vers joynt tenauntz et si[5] *sic* chescun est tenaunt del entier et nul ne seet son several. Par qey countez vers lui.

Et le demaundant. Mesqe jeo counte vers lui jeo n'averoi forqe la moité.

Berr.[6] Pledetz ove lui taunqe vous eiez recoveri ; et si jeo ne face aver tot, jeo vous durray taunt de ma terre demene.

Et il counta. *Et hoc nota.*

Hay v. *White*.[7] En un bref d'entré porté vers une femme en les qeux ele n'ad entré sinoun par le piere le demaundaunt etc. La femme fist defaute etc. Survynt un et dist qe son piere murust seisi de ceux tenementz et d'autres tenementz en son demene come de fee, après qi mort il entra come fitz et heir et assigna ceux tenementz[8] a la femme a tenir[9] en noun de dowere, issint n'ad ele qe fraunctenement et prie d'estre resceu. Et l'autre dyt qe ceo q'il moustra fust contrarie a son bref qe voleit qe la femme entra par son piere, par qei il ne dust estre

[1] See vol. iv. p. 86. [2] *For* un H. *subs.* il *ZZ*. [3] This word, which is omitted in *Z*, is underlined for deletion in *ZZ*. [4] See vol. vi. p. 52. [5] *Om.* si *ZZ*. [6] *Om.* countez vers . . . *Berr. ZZ*. [7] See vol. vi. p. 32. [8] *Om.* tenementz *Z*. [9] *Om.* a tenir *ZZ*.

Horkesley v. *Power*. On a writ of entry the tenant alleged joint feoffment, and put forward a charter of later date than that of the writ. Therefore it was awarded that he say something else. He said that on the day when the writ was purchased one H. was tenant and afterwards he enfeoffed the [present] tenant and his wife, and so they held jointly. Then it was said that if the tenant had purchased the tenements to himself after the purchase of the writ, the writ would have been good enough ; for when the writ is purchased upon one who is not tenant, and that person purchases the tenements afterwards, he makes the writ of the demandant good etc.

Tony v. *Conduit* (1). On a writ of entry brought against two joint feoffees, one made default after default, wherefore etc. At the day of the return of the grand *Cape* etc. the demandant prayed seisin of the land as regards a moiety etc. And the tenant said that he was tenant of the whole and was so on the day when the writ was purchased, and that he was ready to answer for the whole. The demandant said (as above) ; and offered to aver that they were joint tenants as he had alleged in his writ.

Bereford C.J. Will you count against him ?

The Demandant. As regards one moiety we will count against him ; and as regards the other moiety we pray seisin of the land.

Bereford C.J. Is he not in court ready to answer for the whole ? and is he not tenant of the whole, as you suppose by your writ ? for you bring it against them as against joint tenants, and so each of them is tenant of the whole, and neither knows his severalty. Therefore count against him.

The Demandant. If I count against him, I shall have a moiety only.

Bereford C.J. Plead with him until you have a recovery ; and if I do not cause you to have the whole, I will give you as much of my own land.

And he counted. Note this.

Hay v. *White*. A writ of entry was brought against a woman 'into which she had not entry save by the father of the demandant etc.' The woman made default etc. A man intervened and said that his father died seised of these tenements and of other tenements in his demesne as of fee, and after his death he entered as son and heir and assigned them to the woman to hold in name of dower, so that she had only frank tenement ; and he prayed to be received. The other party said that what the intervener showed was contrary to his writ, which said that the woman entered by the demandant's father, and that therefore he

resceu.[1] Et ex consideracione curie il fust resceu d'averrer qe la femme n'entra pas par le lees le piere le demaundaunt come son bref suppose etc. *Et sic nota.*

Northmimmes v. *Castel.*[2] En un bref d'entré un mees et un carué de terre furent en demaunde. Le tenaunt fist defaute par qei le *cape* issist en dreit de la terre et le mees fust entrelessé par negligence etc. Le tenaunt vient et alleggea discontinuaunce etc. et agardé fust etc. qe le procees fust amendé et qe le demaundaunt suwesist[3] un *cape sicut alias* etc. Et in isto placito après defaute faite al secounde *cape* un vynt et pria d'estre resceu. Et fust alleggé encountre lui qe autrefoithe le tenaunt q'ad feet defaute en autre bref pria eyde del piere cesti q'ore prie etc. ou eyde lui fust graunté ou il ne vynt pas, par qei il[4] fust agardé etc. et demaunda jugement si ceste a ore come heir celui qe fust somoné[5] deyve estre resceu [et *non ualuit*; set intellectus istius placiti est, qe si cely qe fut severé ust prié d'estre resceu etc. il ne ust pas resceu[6]] *racione predicta.*

Et le tenaunt vynt par le grant *cape* et mist avaunt le reles le demaundaunt, et ne dist pas lequel il fust fait a lui après la defaute ou devaunt; et agardé fust qe le demaundaunt respoyne al fait. Secus est in casu ou le tenaunt descende en enqueste ou apiert en court et plede[7]; en tiel cas reles ne vaut pas si noun de puisné temps etc.

Anon.[8] En un bref d'entré ' en les qeux le tenaunt n'avoit entré si noun par A. de B. qe ceux tenementz tient en dower del dowement le piere le demaundaunt qi heir il est etc.' le bref est[9] agardé bon, *non obstante* qe alleggé fust qe la fourme serreit : ' et les qeux après la mort la femme al demaundaunt deyvent revertir.' Et puys fust chalengé pur ceo qe la lees la femme ne doun mye accioun eynz la[10] mort; par qei le bref dirroit ' et les qeux après la mort la femme a vous dussent revertyr etc.'

Anon.[11] En un bref d'entré porté vers un tenaunt. Al jour del grauntè[12] *cape* retorné le tenaunt vynt[13] et dyt q'il n'avoit rienz si noun

[1] *Om.* Et l'autre . . . resceu *ZZ.* [2] See p. 63 above. [3] suyt *ZZ.* [4] *Om.* il *ZZ.* [5] *Ins.* et severé *ZZ.* [6] The words in brackets which are missing in *Z* are supplied from *ZZ.* [7] a pleder *ZZ.* [8] See vol. iv. p. 22. This case is reported in *L* only, and is there assigned to Easter Term, 3 Edw. II. [9] *Om.* est *ZZ.* [10] sa *ZZ.* [11] See vol. vi. p. 28. [12] *Om.* graunte *ZZ.* [13] *Om.* vynt *ZZ.*

ought not to be received. By the award of the court he was received to aver that the woman did not enter by the lease of the father of the demandant as his writ supposes etc. Note this.

Northmimmes v. *Castel.* On a writ of entry a messuage and a carucate of land were in demand. The tenant made default whereupon the *cape* issued with respect to the land but the messuage was omitted through carelessness etc. The tenant came and alleged discontinuance etc., and it was awarded etc. that the process should be amended and that the demandant should sue a *cape sicut alias* etc. And in this plea after default made at the second *cape* a man came and prayed to be received. It was alleged against him that heretofore the tenant who had made default in another writ prayed aid of the father of him who now prays etc. and aid was granted to him, but the father did not come; whereupon it was awarded etc. The demandant asked judgment whether this man as heir of him who was summoned and severed ought now to be received; and he could not. The explanation of this plea is that if he who was severed had prayed to be received etc. he would not have been received for the reason aforesaid.

The[1] tenant came by the grand *cape* and put forward the release of the demandant, but did not say whether it was made to him after the default or before. It was awarded that the demandant answer the deed. It is otherwise where the tenant proceeds to an inquest or appears in court and pleads. In such a case a release is worth nothing unless of a later date etc.

Anon. On a writ of entry 'into which the tenant had not entry save by A. de B. who held those tenements in dower of the endowment of the father of the demandant whose heir he is etc.' the writ was awarded good, notwithstanding that it was alleged that the form should be: 'and which after the death of the woman ought to revert to the demandant.' And then it was challenged because it is not the lease of the woman but her death which gives the action. Therefore the writ should say: 'and which after the death of the woman ought to revert to you etc.'

Anon. A writ of entry was brought against a tenant. At the day when the grand *cape* was returned the tenant came and said that he

[1] This paragraph relates to another case, but it is written in continuation of *Northmimmes* v. *Castel* in both manuscripts.

joynt etc. et moustra[1] chartre et demaunda jugement de bref. Et *non recipitur*, eynz q'il eust sauvé la defaute etc.

Bere v. *Abyndon*.[2] Bref fust porté vers un tenaunt qi fist defaute. Survynt un et dyt qe la femme n'avoit q'a terme de vie, et dyt qe les tenementz furent donez a son piere et a sa miere q'ad fet defaute et qe[3] les heirs son piere, et pria d'estre resceu. Et pur ceo qe ceo fust le purchace son piere etc. et de ceo n'avoit rienz qe le tesmoigna etc. *non potuit admitti etc.*

Nota q'un tenaunt dist q'il ne fust pas tenaunt en commune auxi come le bref suppose. Et non recipitur quia posset esse tenens de integro ; et sic breue bonum etc.

Nota q'il suffist[4] alleger fraunchise al primer jour del plee et ne mye au primer jour q'il ount en court ; ne mye a la graunt *Cape* retorné, la fraunchise ne serra pas alowé. Tamen uide libertatem esse allocatam in breui de compoto ubi placitum processum fuit usque ad *exigas* etc.

Anon. En un bref de douwer porté vers gardeyn il clama fraunctenement et nient com gardeyne et dit coment le baroun la femme lui enfeffa etc. ; quia credo, in huiusmodi casu oportet ostendere qualiter sit suum liberum tenementum. La femme tendi d'averer qe son baroun mourust seisi etc. Et sic ad patriam.

Rus v. *The Earl of Gloucester*.[5] Quidam sunt in oppinione in casu ubi[6] aliquis dat tenementum uiro et uxori eius et heredibus de corporibus etc. quod secunda uxor habebit dotem etc.

Anon. Un bref de faux jugement fuit porté, pur ceo qe les suiteres ajuggerent qe le tenaunt n'averoit[7] pas la vewe en un bref de dreit, pur ceo q'il avoit eu un autre bref etc. e pur ceo qe le jugement ne se tailla pas sur le principal il ne prist rien etc.

[1] *Ins.* avaunt *ZZ*. [2] See vol. vi. p. 29. [3] a *ZZ*. [4] *Ins.* de *ZZ*. [5] See vol. vi. p. 161, and p. 33 above. [6] quando *ZZ*. [7] n'avoit *ZZ*.

had nothing save jointly etc. And he put forward a charter and asked judgment of the writ. He was not received until he had saved the default etc.

Bere v. *Abyndon.* A writ was brought against a tenant who made default. A man intervened and said that the woman had only a term for life, and that the tenements were given to his father and to his mother, who had made default, and the heirs of his father, and he prayed to be received. And because this was the purchase of his father etc., and he had nothing which witnessed the purchase etc., he could not be received etc.

Note. A tenant said that he was not tenant in common as the writ stated. He was not received to say this, because he might be tenant of the entirety, and so the writ might be good etc.

Note that it is sufficient to allege a franchise on the first day of the plea, and not at the first day which they have in court; and on the day when the grand *cape* is returned the franchise will not be allowed. Nevertheless observe that a franchise was allowed in a writ of account where there was process in the plea as far as the *exigas* etc.

Anon. A writ of dower was brought against a guardian, who claimed frank tenement and not to be tenant as a guardian, and he stated that the husband of the woman enfeoffed him etc. because, I think, it is necessary in such a case to show how it is his frank tenement. The woman offered to aver that her husband died seised etc. And so to the country.

Rus v. *The Earl of Gloucester.* Some are of opinion, where a man gives a tenement to a husband and his wife and the heirs of their bodies etc. that a second wife will have dower etc.

Anon. A writ of false judgment was brought, because the suitors adjudged that the tenant should not have view in a writ of right, because he had had another writ etc. And because the judgment was not based upon the principal writ, he took nothing etc.

The Abbess of Barking v. *Lettle.*[1] Une femme tenaunt en dower avowa par la resoun q'ele tint[2] un maner en dower a quel maner les services etc. sount regardaunt des queux services son baroun fust seisi par my la mayn le piere[3] le pleintif; q'après la mort son baroun cel maner fust assigné par l'eir etc. Et le pleintif[4] demaunda jugement desicom ceux services sont[5] grosses auxi com avoesoun et s'il deyvent del assignement de dowere passer il covendroit q'il fuissent expressement motez, et il ne dye pas qe ceux services lui furent[6] assignez, par quei etc. Et d'autrepart ele n'ad pas dist q'ele fust seisie par quei etc. Et dictum fuit per iusticiarios que services et avowesons sont grosses en la mayn le roi et hors de sa mayn ne passent pas s'il ne seient expresement motez; mès aliter est inter alias personas; et quant a ceo q'ele ne fust unqes seisie le baroun est garraunt de dowere la femme et seisine de lui suffit. Et fut l'avowere agardé bon etc.

Randolf v. *Bavent.*[7] Un avowere fust fete sur le pleintif soul, et il dit q'il n'avoit rienz en lez tenementz si noun joynt ove un tiel de qi il n'avoit pas fait mencioun en avowant. Jugement etc. Et pur ceo q'il n'avoit pas especiauté qe tesmoigna etc. il ne fust pas resceu a tiele excepcioun.

Anon.[8] Quere, si le seignour puisse avower en la commune de pasture pur service arere *eo quod* cele lieu n'est pas parcele des tenementz de lui tenuz auxi com il covent dire en avowant etc.

Anon. Nota[9] qe tot eyt homme countée par my damages en bref d'amesurement de pasture, homme ne deit damages recoverer pur ceo qe le plee prent issue tot en le dreit etc.

Item[10] quere, si amesurement se face entre ij tenauntz si toutz lez tenauntz serront par taunt amesurez et si homme purra vers eux avoir bref *de secunda superoneracione etc.*

[1] See vol. iv. p. 103. [2] *Om.* tint *Z.* [3] In error for 'predecessour.'
[4] tenant *ZZ.* [5] furent *ZZ.* [6] sont *ZZ.* [7] See vol. vi. p. 106.
[8] See vol. vi. p. 126. This case is not noted in *ZZ.* [9] See vol. vi. p. 140.
[10] The first six words only of this case are noted in *ZZ.*

The Abbess of Barking v. *Lettle.* A woman who held in dower avowed for the reason that she held a manor in dower to which manor the services etc. are regardant and of these services her husband was seised by the hand of the plaintiff's predecessor[1]; and that after the death of her husband this manor was assigned to her by the heir etc. The plaintiff asked judgment inasmuch as these services were grosses, just as much as an advowson, and if they are to pass by an assignment of dower, it would be necessary that they should be expressly mentioned, and the woman does not say that these services were assigned to her, wherefore etc. Moreover she has not said that she was seised of the services, wherefore etc. And it was said by the justices that services and advowsons are grosses in the king's hand, and from his hand they do not pass unless they be expressly mentioned; but it is not so with other people; and as to her never having been seised, the [heir] is the warrant of the woman's dower, and his seisin suffices. The avowry was awarded good etc.

Randolph v. *Bavent.* An avowry was made upon the plaintiff alone; and the plaintiff said that he had nothing in the tenements save jointly with a certain person, of whom the avowant had made no mention in his avowry. He asked judgment etc. And because he had no specialty which witnessed this etc. he was not received to this exception.

Anon. Query, whether the lord can avow in common of pasture for services in arrear, for that place is not parcel of the tenements held of him, as must be said in avowing etc.

Anon. Note, that although a man has counted by damages in a writ of admeasurement of pasture he ought not to recover damages, for the plea takes its issue entirely in the right etc.

Item, query, whether, if admeasurement be made between two tenants, all the tenants will be admeasured thereby; and whether a man can have a writ of second surcharge against them.

[1] See note 3 opposite.

Anon. Item. Quere si la pasture seit amesuré[1] par assent de touz sanz bref en pays, si cel amesurement soit assetz bon d'aver sur ceo bref *de secunda superoneracione etc.*; quia statutum specificat 'quando pastura fuerit admensurata coram iusticiariis uel coram uicecomite,' et *breue de secunda superoneracione* supponat breue precedens. Ideo quere etc.

Anon.[2] Tenaunte en dowere lessa son estat etc. Le feffé fist wast pur quei le heir porta bref de wast vers la femme tenaunte en dowere et recoveri le lieu wasté etc. Puisse la femme tenaunte en dowere porta bref de covenant vers le feffé et fust resceu *non obstante* q'ele n'avoit nule especiauté qe testmoigna le covenant. Et hoc per consideracionem curie etc.

Anon.[3] En un bref de[4] deceit sur le *monstrauit* trové fust qe le baillif avoit x deners de rente et pur ceo qe avys fust a la court qe ceo ne soeffreit pur amener lui acompte de x liveres, agardé fust q'il ne prist rien par son bref. Et ex hoc nota in casibus ou utlagarie est a defaire[5] par la reson qe le defendaunt purra estre mené,[6] par ses terres et chateux etc.

Nota.[7] Secundum oppinionem quorundam[8] homme ne recovere mye a[9] bref d'estreppement si noun de ceo q'est fait parentre jugement rendu et la seisine liverée ou après verdist d'enqueste etc.

Strode v. *The Prior of Lodres.*[10] En un bref de chaumperté un avoit purchacé les tenementz pendauntz en[11] plee, et le bref fust abatu pur ceo q'il fust porté al vicounte de Sussex et les tenementz furent en Kent *non obstante* qe alleggé fust qe le demaundaunt fust demuraunt en Sussex pur ceo qe homme doit enquere del feffement en countée ou la terre est etc.

Upton v. *Milton.*[12] En un bref de dette[13] la dette fust demaundé par obligacioun. Le defendaunt mist avaunt l'aquitaunce qe le

[1] There is an omission in *ZZ* from the words 'entre ij tenauntz' in the previous note as far as this word. [2] See p. 171 above. [3] See p. 159 above. [4] *Om.* de *Z.* [5] rendre *ZZ.* [6] amené *ZZ.* [7] See vol. vi. p. 128. [8] *Ins* qe *ZZ.* [9] par *ZZ.* [10] See vol. vi. p. 141. [11] le *ZZ.* [12] See p. 26 above. [13] See p. 26 above.

Anon. *Item*, query, if the pasture be admeasured by the assent of all the commoners in the place without a writ, whether that admeasurement is sufficiently good to have upon it a writ of second surcharge etc.; for the statute[1] expressly states 'when the pasture shall have been admeasured before the justices or before the sheriff'; and a writ of second surcharge implies a preceding writ. Therefore query etc.

Anon. A tenant in dower leased her estate etc. The feoffee committed waste whereupon the heir brought a writ of waste against the woman holding in dower, and recovered the place wasted etc. Then the woman holding in dower brought a writ of covenant against the feoffee and she was received, notwithstanding that she had no specialty which witnessed the covenant. And this was by an award of the court etc.

Anon. On a writ of deceit on the *monstrauit* it was found that the bailiff had ten pence of rent, and because the court was of opinion that this was not sufficient to bring him to account for ten pounds it was awarded that he take nothing by his writ. And note this, in cases where outlawry is to be defeated, because the defendant can be brought to answer by his lands and chattels etc.

Note. According to the opinion of certain persons, a man will not recover on a writ of estrepment save of estrepment committed between judgment rendered and seisin delivered or after the verdict of the inquest etc.

Strode v. *The Prior of Lodres.* On a writ of champerty a man had purchased the tenements while the plea was pending, and the writ was abated because it was brought to the sheriff of Sussex, and the tenements were in Kent; and this notwithstanding that it was alleged that the demandant was dwelling in Sussex, because inquiry should be made of the feoffment in the county where the land is situate etc.

Upton v. *Milton.* On a writ of debt the debt was demanded by obligation and the defendant put forward an acquittance which the

[1] Stat. Westm. II. c. 8.

pleintif dedist. Al jour del enqueste retourné le defendaunt fist defaut, par quei fust agardé qe le pleintif recoverast sa dette et ces damages solom discrecioun des justices pur ceo qe le defendaunt ne suwist pas ceo q'il mist en barre ; et pur ceo qe par mettre avaunt del aquitaunce il conust obligacioun. Mès en cas ou le defendaunt dedist obligacioun après enqueste jointe, il poet aver une defaut ou estre essonié *secundum statutum* etc. Et s'il face defaut al secounde foithe, il serra atteint de la dette, qar quant son fait est mys avaunt et il le dedist et puisse[1] face defaute *ut supra* homme le tient auxi com nyent dedist *secundum oppinionem quorundam.* Tamen quere uerum[2] processum in hoc casu. Et quidam dicunt q'en cas ou homme demaunde dette et autre rien n'eit qe sute bone, e le defendaunt se mette en pays qe rien ne lui deit, en cel cas après q'il eit fait ij foithes defaut ou q'il eit fait defaut après ceo q'il soit essonié homme prendra l'enqueste par sa defaute *uirtute statuti etc.*

Wolfe v. *Martone.*[3] Une dette fust demaundé par obligacioun qe voleit qe s'il ne paiast a certain jour qe le Conestable de S. la poet lever ; et il dist qe le Conestable l'avoit levé. Et pur ceo q'il n'avoit acquitaunce et qe le Conestable n'y avoit poaer etc., fust agardé q'il recoverist sa dette[4] etc. et qe l'autre se purchace vers le Conestable si sibi uiderit expedire etc.

De la Chaumbre v. *The Bishop of London.*[5] En un bref de dette porté vers executours alleggé fust q'il avoit un executour le quel avoit iij executours qe sont en vie et les queux avoient administracioun taunt avaunt de le biens le premer testatour com les[6] queux ne furent pas nomez en le bref. Jugement etc.

Berewyk v. *Brembre.*[7] Une femme porta bref de dette vers ij et mist avaunt lour fait. L'un conust le fait etc. et ne poet dedire sa demaunde.[8] L'autre dist qe la femme fut covert etc. par quei ele ne dust estre respoundu. E les justices sont en awer[9] ceo qe serra fait de la conisaunce l'un q'avoit conu l'un fait. Ideo quere etc.

[1] pus *ZZ.* [2] certum *ZZ.* [3] See vol. iv. p. 145. [4] *Ins.* ut supra *ZZ.* [5] See p. 22 above. [6] *Ins.* ly *ZZ.* There appears, however, to be an omission here in both texts. [7] See vol. vi. p. 9. [8] So in *ZZ.* [9] *Ins.* de *ZZ.*

plaintiff denied. At the day when the inquest was returned the defendant made default, whereupon it was awarded that the plaintiff recover his debt and his damages according to the discretion of the justices, because the defendant did not pursue what he had put forward as a bar, and because by putting forward the acquittance he acknowledged the obligation. But in a case where the defendant denied the obligation after the inquest had been joined he can have one default or be essoined in accordance with the statute[1] etc.; and if he make default a second time he will be convicted of the debt, for when his deed is put forward and he denies it, and then makes default (as above), it is held according to the opinion of some persons as not denied. But query the correct process in this case. And some say that in a case where a man demands a debt and has nothing else than 'good suit,' and the defendant puts himself on the country that nothing does he owe him, then in that case after he has twice made default, or he has made default after being essoined, the inquest will be taken by his default by virtue of the statute etc.

Wolfe v. *Martone.* A debt was demanded by obligation which stated that if the obligee did not pay on a certain day the constable of Skipton might levy it; and the defendant said that the constable had levied it. And because the defendant had no acquittance, and the constable had no power etc., it was awarded that the plaintiff should recover his debt etc. and that the defendant purchase a writ against the constable if he thought fit etc.

De la Chaumbre v. *The Bishop of London.* On a writ of debt brought against executors it was alleged that there was an executor who had three executors who were alive and who had administered as well the goods of the first testator as those of their own testator, and they were not named in the writ. They asked judgment etc.

Berewyk v. *Brembre.* A woman brought a writ of debt against two and put forward their deed. One of the defendants acknowledged the deed etc., and could not deny her demand. The other said that the woman was covert etc., and therefore she ought not to be answered. And the justices were in doubt[2] about what should be done concerning the acknowledgment of the defendant who had acknowledged the deed. Therefore query etc.

[1] Stat. Marl. c. 13. See also Stat. Westm. II. c. 27.

[2] The word 'awer,' with the variant forms 'aweer,' 'eoyr,' and 'ewer,' occurs in *Britton.* F. M. Nichols in his useful Glossary at the end of his edition of that work (vol. ii. p. 366) states that this word is perhaps from the Latin 'aequare.'

Anon. En bref d'acompte, qe fust porté vers celui a qi le procheyn amy avoit lessé etc. chalengé pur ceo q'il ne fust pas procheyn amy a qi etc. par quei devers lui etc. Et dist outre qe le procheyn amy a qi etc. lui lessa etc. a ferme pur c. souz rendaunt par an les queux il avoit paié qe sont[1] naturelement les issues de la terre et devers lui[2] girroit le bref et ne mye devers nous qe ne[3] sumes qe fermers. Et a ceo fust dist qe homme poet user bref d'engettement de garde *racione dimissionis* etc. et cest bref d'acompt gyt devers chescun gardeyn et auxi fait bref de wast ; par quei [etc.]. Et ad hoc consencierunt[4] justices etc.

Anon. En bref d'acompte le defendaunt vint par le *capias* et dist q'il ne fust unqes son baillif, prest etc. pur ceo q'il vynt par le *capias* il trova maynprise etc. et al jour del enqueste retourné il mist avaunt[5] proteccioun et allocatur.

Et credo quod in huiusmodi placito defendens nequit facere attornatum. Ideo quere[6] etc.

Anon.[7] Tenementz furent lesses a un homme a terme de sa vie et après sa mort qe ses executours les tenissent xx aunz ; le tenaunt devia. Le feffour entra. Les executours porterent bref de covenant en tiele fourme ' Precipe R. etc. quod teneat A. B. et C. assignez W. de L. conuencionem ' ; et puisse disoient en countaunt coment le lees se fist *ut supra* et coment il furent executoures etc. Et fuist exceptiouné au counte desicome assigné suppose le propretie en sa persone demene etc. et il sont executours ou il ne point proprete avoir, ne il ne moustrent nul especiauté qe lour fait assignez. Et d'autrepart celui qe deit estre assigné il covent q'il seit fait assigné en la vie celui qe lui fra assigné et q'il se ouste de la possessioun de la chose dont il voet faire assigné issint qe la possession se veste en la persone assigné la quele chose pleinement defaut en ceo cas. Et demaundoms jugement. Responsum fuit in hoc casu q'il ne put avoir autre bref en la chauncellerie fors com assigné, pur ceo q'il ne furent pas seisi des tenementz après la mort lour testatour, qar s'il demaundassent com executours par resoun de devys il n'avereint pas bref etc.

[1] soune *ZZ*. [2] lun *Z*. [3] *Om.* ne. *ZZ*. [4] consentirent *ZZ*.
[5] *Ins.* un *ZZ*. [6] queritur *Z*. [7] See p. 173 above.

Anon. A writ of account, which was brought against him to whom the next friend had leased etc. was challenged because he was not the next friend of him to whom [the inheritance could not descend] etc., and therefore against him etc. And he said further that the next friend to whom [the inheritance] etc. leased to him etc. to farm for one hundred shillings to be rendered annually and this rent he had paid, and this rent constitutes the issues of the land, and that the writ should lie against him as the next friend and not against us who are only farmers. And to this it was said that a writ of ejectment of ward could be used *racione dimissionis* etc.; and this writ of account lies against every guardian, as does also a writ of waste, therefore etc. To this the justices assented etc.

Anon. On a writ of account the defendant came by the *capias* and said that he was never the plaintiff's bailiff, ready was he etc.; and because he came by the *capias* he found mainpernors etc. At the day when the inquest was returned he put forward a protection; and this was allowed.

And I think that in a plea of this kind the defendant cannot make an attorney. Therefore query etc.

Anon. Tenements were leased to a man for the term of his life and after his death his executors were to hold them twenty years. The tenant died. The feoffor entered. The executors brought a writ of covenant in this form:—'Command . . . that he hold to A., B., and C. the assignees of W. de L. the covenant [made etc.]' Then they said in counting how the lease was made (as above) and how they were executors etc. An exception was taken to the count on the ground that 'assignee' supposes the property to be in the assignee's own person etc.; and they are executors, and can have no property [in the tenements]; and they show no specialty which makes them assignees. Besides, he who is to be an assignee must be made an assignee in the lifetime of him who will make him an assignee, and must divest himself of possession of the thing whereof he wishes to make an assignee, so that the possession vests in the person of the assignee; and these requirements are plainly wanting in this case. We ask judgment. It was answered that in this case they could have no other writ in the chancery save as assignees, because they were not seised of the tenements after the death of their testator, for if they were to demand as executors by reason of a devise they would not have a writ etc.

Berenger v. *Barton*.[1] Un H. porta bref de covenant vers un B. et counta q'atort ne lui[2] tient covenant d'un mees etc. et dist qe la ou B. lui lessa etc. tanqe a terme de viij auns pleinement[3] compliz et obliga etc. a garraunter et defendre son terme vers totes gentz, la vint l'eschetour et lui osta etc. par resoun del noun age un S. fitz et heir un A. qe ceux tenements tient en chef du roi etc. Et fust le defendaunt chacé a respondre pur ceo q'il put aver son recoverir vers le heir quant il vendra a son plein age etc.

Bardolf v. *Bardolf*.[4] En un *quid iuris clamat* le tenaunt clama estat a terme de vie et de ceo moustra fait par quel le conissour fust lyé a garrauntie et al aquitaunce ; et dist qe le conissé est deinz age et ne se put lyer al aquitaunce ne a la garrauntie et demaunda jugement s'il dust attourner etc. Responsum fuit qe la garrauntie lui est totdiz reservé vers un[5] lessour et auxi q'il poet derener l'aquitaunce par bref de covenaunt vers son lessour par voie de damages etc. Agardé fust q'il n'attourna pas etc. Et in hoc casu dictum fuit qe mesqe le conissour n'eit par quey estre lyé etc. unqore il ne deit attorner si le conissé ne fust tiele q'il se put lyer al aquitaunce. Et fuit causa etc. pur ceo qe la garrauntie[6] demurt etc. *Secus est* de tenaunt en dower qar ele ne deit pas attorner sanz ceo qe le conissé se[7] voille leyer[8] a la garrauntie. Et quere ueritatem.

Anon. En[9] un *quid iuris clamat* dictum fuit par *Berr.* qe mesqe le conissé seit non suwy ou mesqe le proces soit peri ou qe variaunce fusse en le *quid iuris clamat* en[10] ou[11] la note par negligence de court ou de partie il poet autrefoithe aver bref de mesme la nature hors de la note. Tamen multi sunt in contraria opinione etc.

[1] See vol. ii. p. 84. [2] *Om.* lui *ZZ*. [3] *Om.* pleinement *ZZ*.
[4] See vol. vi. p. 99. [5] le *ZZ*. [6] garde *ZZ*. [7] ly *ZZ*. [8] lier *ZZ*.
[9] See vol. vi. p. 193. [10] et *ZZ*. [11] en *ZZ*.

Berenger v. *Barton.* One H. brought a writ of covenant against one B. and counted that wrongfully he did not hold to him a covenant of one messuage etc.; and he said that whereas B. leased to him [certain tenements] for a term of eight years fully to be completed and bound himself and his heirs to warrant and defend his term against all men, there came the escheator and ousted him etc. by reason of the nonage of one S. the son and heir of one A. who held those tenements in chief of the king etc. The defendant was driven to answer, because he could have his recovery against the heir when he came to his full age etc.

Bardolf v. *Bardolf.* On a *quid iuris clamat* the tenant claimed an estate for the term of her life, and in support thereof she showed a deed whereby the conissor was bound to warranty and acquittance; and she said that the conissee was within age, and could not be bound to acquittance or warranty. She asked judgment whether she ought to attorn etc. It was answered that warranty is always reserved against a lessor, and also that she could deraign the acquittance against her lessor by a writ of covenant by way of damages etc. It was awarded that she should not attorn etc. And in this case it was said that even if the conissor had nothing by which he could be bound etc., still she ought not to attorn, if the conissee was not such a person as could bind herself to the acquittance. The reason etc. was that the warranty might remain to her etc. It is otherwise with a tenant in dower, for she ought not to attorn unless the conissee is willing to bind himself to the warranty. Query the truth of this.

Anon. On a *quid iuris clamat* it was said by Bereford C.J. that unless the conissee be non-suited or unless the process come to an end, or there be a variance between the *quid iuris clamat* and the note, either by the negligence of the court or of a party, the conissee cannot have a second time a writ of the same nature out of the note. Nevertheless many are of a contrary opinion etc.

APPENDIX.

I.

The following is the text of the record mentioned on p. xxxvii of the Introduction. The reference to it is De Banco Rolls, Mich. 34 Edw. I. (No. 161), r. 451, Wilts. A transcript of it appears in *Y* at fol. 33 v°.

Assisa alias coram Heruico de Staunton et I. Randolf iusticiariis ad assisas apud Wilton' capiendas assignatis die Iouis in crastino sancti Mathei apostoli anno regni regis nunc xxxiiij^to^ uenit recognitura si Fulco le fiz Waryn et Warinus filius eiusdem Fulconis et Iohanna filia Laurencii de Bluntesdon iniuste etc. disseisiuerunt Ricardum de Manton et Iohannam uxorem eius de libero tenemento in Brodebluntesdon post primam etc. Et unde iidem Ricardus pro se et predicta Iohanna queritur[1] quod disseisiuerunt eos de duabus partibus unius messuagii centum sexaginta et sex acris terre et sex acris prati et quatuor solidatis redditus cum pertinenciis etc.

Et Warinus et Iohanna filia Laurencii ueniunt et dicunt quod ipsa Iohanna est uxor ipsius Warini eidem Warino legitimo matrimonio copulata: et hoc parati sunt uerificare ubi et quando etc. et quod ipsa Iohanna est eadem Iohanna quam predictus Ricardus nominat uxorem suam in breui suo. Et petunt iudicium si assisa inter eos procedere debeat in hac parte.

Et Warinus ad hoc non respondet; set dicit ut prius quod predicta Iohanna est uxor sua legitima. Et hoc pretendit uerificare ubi et quando etc. Et quia uidetur iusticiariis quod super contingentibus factum predictum est inquirendum in hoc casu etc. Ideo inquiratur rei ueritas per assisam etc.

Iuratores dicunt super sacramentum suum quod predictus Laurencius pater predicte Iohanne cuius heres ipsa est tenuit predicta tenementa de predicto Fulcone per homagium et seruicium militare et obiit in homagio predicti Fulconis et quod idem Fulco dedit predicto Warino custodiam predictorum tenementorum et maritagium predicte Iohanne que tunc fuit etatis octo annorum et quod predictus Warinus per donum predictum seisitus fuit de custodia corporis predicte Iohanne et tenementorum predictorum et quod idem Warinus recenter misit prefatam Iohannam ad abbaciam monialium de Burnham in comitatu Buk' custodiendam; que quidem Iohanna morabatur in eadem abbacia per quindecim dies, et quod idem Warinus eodem tempore desponsauit predictam Iohannam ibidem quando eadem Iohanna fuit etatis octo annorum completorum. Et dicunt quod quidam magister Willelmus de Apperlee cui predictus Fulco dimiserat manerium de Staunton in comitatu Wiltes' ad quod quidem manerium seruicium de predictis tenementis unde assisa ista arramata est pertinet clamans custodiam predictam tam de maritagio ipsius Iohanne quam de

[1] So in the roll.

tenementis illis cepit abduxit et rapuit predictam Iohannam in abbacia predicta recenter post predictos quindecim dies elapsos et tenuit predictam Iohannam in custodia sua per dimidium annum et postmodum idem Willelmus de Apperlee uendidit et concessit maritagium predicte Iohanne et custodiam predictorum tenementorum cuidam Radulfo le Coffrer fratri predicti Ricardi, qui quidem Radulfus statim post predictas uendicionem et concessionem sibi factas seisiuit predicta tenementa, de quibus predictus Ricardus de Manton modo queritur etc., in manum suam nomine custodie; et similiter predicta Iohanna fuit in custodia ipsius Radulfi per dimidium annum quousque idem Radulfus maritauit predictam Iohannam predicto Ricardo fratri suo quando eadem Iohanna fuit etatis nouem annorum et quod idem Radulfus statim post matrimonium inter predictos Ricardum et Iohannam celebratum dedit [et] concessit predicto Ricardo custodiam eorundem tenementorum et eadem tenementa cum pertinenciis prefatis Ricardo et Iohanne reddidit et liberauit. Et dicunt quod predictus Ricardus desponsauit predictam Iohannam apud London' quando ipsa Iohanna fuit etatis nouem annorum sicut predictum est, et quod iidem Ricardus et Iohanna post dictum matrimonium inter eos celebratum morabantur ad inuicem per tres annos proximo subsequentes cubantes in uno lecto et tanquam uir et uxor maritali affeccione in omnibus se habentes. Et dicunt quod postmodum prefata Iohanna morabatur apud Marleberge in comitatu isto et volens se de predicto Ricardo elongare dixit cuidam Petro le Messager hospiti suo quod ipsa pullos columbarum affectabat comedere, et iidem Petrus et Iohanna accesserunt ad quoddam columbarium et idem Petrus, aperto hostio eiusdem columbarii, intrauit in columbarium illud, et prefata Iohanna stans foras clausit hostium columbarii illius post predictum Petrum, et eodem Petro infra columbarium illud clauso hostio existente, prefata Iohanna se elongauit et transtulit se ad predictum Warinum, qui quidem Warinus simul cum predicto Fulcone patre suo, statim postquam predicta Iohanna ut predictum est se elongauerat, eiecerunt predictum Ricardum de tenementis predictis, unde[1] idem Ricardus nomine suo et nomine predicte Iohanne se queritur disseisitum etc.

Et datus fuit dies eis hic ad hunc diem scilicet in crastino sancti Martini nunc de audiendo iudicio suo etc.

Et modo uenerunt partes et datus est eis dies hic a die sancti Hilarii in quindecim dies de audiendo iudicio etc. eo quod iudicium nondum etc. Ad quem diem predicti Fulco le fiz Waryn et Warinus filius eiusdem Fulconis et Iohanna filia Laurencii uenerunt. Et predictus Ricardus de Manton non est prosecutus. Ideo consideratum est, quod iidem Fulco Warinus et Iohanna inde sine die, et predictus Ricardus et plegii sui de prosequendo in misericordia etc. Querantur nomina plegiorum etc.

Translation of the Foregoing Record.

An assize heretofore came before Hervy of Stanton and J. Randolf justices assigned to take assizes at Wilton on Thursday[2] the morrow of St. Mathew

[1] The words 'dampna si qua decem marce' are here written in the margin.
[2] 22 September 1306.

the apostle in the thirty-fourth year of the reign of the king who now is to make recognition whether Fulk le fitz Warin and Warin the son of the same Fulk and Joan the daughter of Lawrence of Bluntesdon unlawfully etc. disseised Richard of Manton and Joan his wife of a frank tenement in Broad Bluntesdon after the first etc. And whereupon the same Richard for himself and the aforesaid Joan complains that they disseised them of two parts of a messuage one hundred and sixty-six acres of land and six acres of meadow and four shillings of rent with the appurtenances etc.

And Warin and Joan the daughter of Lawrence come and say that she the said Joan is the wife of him the said Warin yoked to him in lawful matrimony; and this they are ready to aver where and when etc.; and that she the said Joan is the same Joan as she whom the aforesaid Richard names as his wife in his writ. And they ask judgment whether the assize between them ought to proceed in this matter.

And Warin makes no answer to this, but says as before that the aforesaid Joan is his lawful wife. And he offers to aver this where and when etc. And because it appears to the justices that in this case inquiry ought to be made touching the aforesaid matter etc., therefore let the truth thereof be inquired by the assize etc.

The jurors say upon their oath that the aforesaid Lawrence the father of the aforesaid Joan whose heir she is held the aforesaid tenements of the aforesaid Fulk by homage and knight service and died in the homage of the aforesaid Fulk and that the same Fulk gave to the aforesaid Warin the wardship of the aforesaid tenements and the marriage of the aforesaid Joan who was then of the age of eight years; and that the aforesaid Warin was seised by the gift aforesaid of the wardship of the body of the aforesaid Joan and of the tenements aforesaid, and that the same Warin forthwith sent the aforesaid Joan to the abbey of the nuns of Burnham in the county of Buckingham in ward and this Joan remained in the same abbey fifteen days, and that the same Warin at that same time married the aforesaid Joan there when the same Joan was of the age of eight complete years. And they say that one Master William of Apperlee (to whom the aforesaid Fulk demised the manor of Stanton in the county of Wilts to which manor the service in respect of the aforesaid tenements whereof this assize is brought belongs) claiming the aforesaid wardship as well of the marriage of her the said Joan as of those tenements took abducted and ravished the aforesaid Joan who was in the abbey aforesaid immediately after the aforesaid fifteen days had elapsed, and kept the aforesaid Joan in his custody for half a year and afterwards the same William of Apperlee sold and granted the marriage of the aforesaid Joan and the custody of the aforesaid tenements to one Ralph le Coffrer the brother of the aforesaid Richard, and this Ralph immediately after the aforesaid sale and grant to him seized the aforesaid tenements of which the aforesaid Richard of Manton now complains into his hand etc. in the name of wardship. And the aforesaid Joan likewise was in the wardship of him the said Ralph for half a year until the same Ralph married the aforesaid Joan to the aforesaid Richard his brother when the same Joan was of the age of nine years, and that the same Ralph immediately after the marriage cele-

brated between the aforesaid Richard and Joan gave and granted the custody of the same tenements to the aforesaid Richard and rendered and delivered the same tenements with the appurtenances to the aforesaid Richard and Joan. And they say that the aforesaid Richard married the aforesaid Joan at London when she the said Joan was of the age of nine years as is aforesaid, and that the same Richard and Joan after the said marriage celebrated between them remained with each other for the three years next following sleeping in one bed and as man and wife conducting themselves with conjugal affection in all respects. And they say that afterwards the aforesaid Joan was staying at Marlborough in this county and wishing to separate herself from the aforesaid Richard she said to one Peter le Messager her host that she would like to dine off young doves and the same Peter and Joan approached a certain dovehouse, and the same Peter when the door of the same dovehouse was open entered that dovehouse and the aforesaid Joan standing outside closed the door of that dovehouse behind the aforesaid Peter, and while the same Peter was within that dovehouse and the door was closed the aforesaid Joan escaped and transferred herself to the aforesaid Warin; and this same Warin together with the aforesaid Fulk his father immediately after the aforesaid Joan, as is aforesaid, had escaped, ejected the aforesaid Richard from the tenements aforesaid, whereof the same Richard in his own name and in the name of the aforesaid Joan complains that he has been disseised.

And a day was given them here at this day, to wit the morrow of St. Martin now to hear their judgment etc.

And now the parties came and a day is given them here on the quindene of St. Hilary to hear judgment etc. on the ground that judgment has not yet etc. And on this day the aforesaid Fulk le fitz Warin and Warin the son of the same Fulk and Joan the daughter of Lawrence came. And the aforesaid Richard of Manton does not sue. Therefore it is awarded that the same Fulk Warin and Joan go thereof without day, and that the aforesaid Richard and his pledges of suing be in mercy. Let the names of the pledges be sought etc.

II.

The following is the text of the record mentioned on p. lxiv of the Introduction. The reference to it is De Banco Rolls, Easter, 22 Edw. I. (No. 104), r. 82, Worc.

Magister Robertus de Wychio in misericordia pro pluribus defaltis.

Idem magister Robertus summonitus fuit ad respondendum magistro Thome Cantok de placito quod reddat ei duodecim marcas que ei aretro sunt de annuo redditu quadraginta solidorum quem ei debet etc. Et unde dicit quod, cum idem magister Robertus die Ueneris proxima ante festum beate Margarete uirginis anno regis nunc sexto decimo apud Gloucestre obligasset se teneri predicto magistro Thome in predicto annuo redditu quadraginta solidorum de camera ipsius magistri Roberti percipiendo singul'[1]

[1] The word 'annis' is probably omitted here.

ad festum sancti Michaelis tota uita ipsius magistri Roberti et de quo annuo redditu idem magister Thomas fuit seisitus per manus predicti magistri Roberti etc., Idem magister Robertus predictas duodecim marcas de arreragiis predicti annui redditus iniuste detinuit et reddere contradicit unde dicit quod deterioratus est et dampnum habet ad ualenciam centum solidorum et inde producit sectam. Et profert quoddam scriptum sub nomine ipsius magistri Roberti quod testatur quod idem magister Robertus obligauit se eidem magistro Thome in predicto annuo redditu pro laudabili obsequio quod eidem magistro Roberto impendit hactenus et est inposterum fideliter inpensurus etc.

Et magister Robertus per attornatum suum uenit et defendit uim et iniuriam quando etc. et bene cognouit predictum scriptum esse factum suum set dicit quod racione illius scripti nichil de predicto annuo redditu exigere potest. Dicit enim quod idem magister Robertus alias in curia regis hic a die sancti Michaelis in quindecim dies anno regis nunc sexto decimo summonitus fuit ad respondendum Willelmo de Douor' persone de Duderhulle de placito quod idem magister Robertus redderet ei centum et quindecim marcas etc. Et dicit quod idem magister Thomas apud Westmonasterium in aula hic tunc existens eidem magistro Roberto in predicto placito consulere recusauit etc. licet per eundem magistrum sepius inde fuisset requisitus etc. Et hoc paratus est uerificare sicut curia considerauerit etc. Et desicut predicta annuitas ei concessa fuit pro seruicio suo ei impendendo etc., petit iudicium etc.

Et magister Thomas bene cognouit quod predictus magister Robertus eum requisiuit quod esset de consilio suo in predicto placito ; set dicit quod idem magister Robertus postquam in curia regis hic protulerat quoddam scriptum aquietancie de parte predicti debiti quod quidem scriptum calumpniatum fuit tamquam falsum occasione rasure in eodem scripto inuente loco suspecto ipsum magistrum Thomam rogauit quod esset de consilio suo etc. cui idem magister Thomas tunc respondit quod quia predicta falsitas eidem magistro Roberto imposita de predicto scripto etc. tangebat tam dominum regem quam partem aduersam etc. idem magister Thomas de consilio suo in hoc casu esse non potuit eo quod idem Thomas fuit in obsequio domini regis etc. Et petit iudicium si ea occasione debeat ab accione petendi predictum annuum redditum excludi etc.

Et Magister Robertus dicit quod ipse requisiuit predictum magistrum Thomam de consilio et auxilio suo optinendo antequam predictum scriptum de aquietancia in curia hic protulit et antequam predictus Willelmus persona cum eo inde placitauit etc. et idem magister Thomas tam ante predictum placitum inchoatum quam post eidem consulere et auxiliare omnino recusauit. Et hoc petit quod inquiratur per patriam. Et magister Thomas similiter.

Et quia factum predictum de eo quod predictum magistrum Thomam de consilio etc. requisiuit fuit in comitatu Midd' preceptum est uicecomiti Midd' quod uenire faciat hic a die sancti Iohannis in quindecim dies etc. per quos etc. quia tam etc.

Postea a die Pasche in quinque septimanas anno regni regis nunc uicesimo tercio uenerunt partes et similiter iuratores de comitatu Midd' de

consensu parcium electi qui dicunt super sacramentum suum quod predictus Thomas requisitus per ipsum magistrum Robertum uenit ad diem placiti paratus eidem Roberto in consilio et auxilio assistere et ei assistebat quousque idem Thomas falsitatem in predicto scripto inuenit qui quidem Thomas ad defensionem cause illius ulterius prosequi ob falsitatem illam desistebat etc. Ideo consideratum est quod predictus Thomas recuperet arreragia sua de duodecim marcis de tempore ante breue impetratum et de six marcis de tempore breuis pendentis et uiginti solidos secundum statutum quia non habuit warantum suum de seruicio domini regis de quo idem Robertus fecit se essoniari in quindenis sancti Martini proximo preteritis. Et similiter dampna sua que taxantur ad sexaginta solidos per discrecionem iusticiariorum etc. Et Robertus in misericordia.

Dampna—totum clericis: et similiter xx sol. per statutum etc. quia non habuit warrantum suum de seruicio domini regis.

Translation of the Foregoing Record.

Master Robert of Wyche in mercy for several defaults.

The same Master Robert was summoned to answer Master Thomas Cantok on a plea that he render to him twelve marks which are in arrear of an annual rent of forty shillings which he owes to him etc. And whereupon he says that (whereas the same Master Robert on the Friday[1] next before the feast of the Blessed Margaret the Virgin in the sixteenth year of the King who now is bound himself at Gloucester to be holden to the aforesaid Master Thomas in the aforesaid annual rent of forty shillings to be taken from the chamber of him the said Master Robert in every year at the feast of St. Michael all the life of him the said Master Robert; and of this annual rent the same Master Thomas was seised by the hands of the aforesaid Master Robert etc.) the same Master Robert unlawfully detained and refuses to render the aforesaid twelve marks of the arrears of the aforesaid annual rent whereupon he says that he is injured and has damage to the value of one hundred shillings and thereof he brings suit. And he proffers a certain writing under the name of him the said Master Robert which witnesses that the same Master Robert bound himself to the same Master Thomas in the aforesaid annual rent in return for the laudable service which he theretofore rendered to the same Master Robert and is in future faithfully to render etc.

And Master Robert by his attorney comes and denies tort and force when etc. and well he acknowledges the aforesaid writing to be his deed; but he says that by reason of that writing he can demand nothing of the aforesaid annual rent; for he says that the same Master Robert heretofore here in the King's Court on the quindene of St. Michael in the sixteenth year of the king who now is was summoned to answer William of Dover parson of Doderhill on a plea that the same Master Robert should render to him one hundred and fifteen marks etc. And he says that the same Master Thomas being then at Westminster in the hall here refused to be of counsel to the same Master Robert in the aforesaid plea although he was

[1] 16 July 1288.

often requested etc. therein by the same Master. And this he is ready to aver as the Court shall award etc. And inasmuch as the aforesaid annuity was granted to him in return for his rendering etc. to him his service, he asks judgment etc.

And Master Thomas well acknowledges that the aforesaid Master Robert requested him to be of his counsel in the aforesaid plea; but he says that the same Master Robert, after he had produced here in the King's Court a certain writing of acquittance of part of the aforesaid debt which writing was challenged as false by reason of an erasure found in the same writing in a suspicious place, asked him the said Master Thomas to be of his counsel etc.; and the same Master Thomas then answered that because the aforesaid falsity imputed to the same Master Robert concerning the aforesaid writing etc. concerned as well the king as the adverse party etc. the same Master Thomas could not be of his counsel in this case, on the ground that the same Thomas was in the service of the lord king etc. And he asks judgment whether he ought by occasion of that to be barred etc. from an action to demand the aforesaid annual rent.

And Master Robert says that he requested to have the aforesaid Master Thomas of his counsel and aid before he produced the aforesaid writing of acquittance here in court, and before the aforesaid William the parson pleaded with him thereon etc.; and the same Master Thomas as well before the aforesaid plea began as afterwards entirely refused to counsel and aid him. And he asks that inquiry on this be made by the country; and Master Thomas likewise.

And because the aforesaid matter concerning this that he requested the aforesaid Master Thomas to be of his counsel etc. took place in the county of Middlesex, the Sheriff of Middlesex is ordered that he cause to come here on the quindene of St. John etc. by whom etc. because as well etc.

Afterwards five weeks after Easter in the twenty-third year of the reign of the king who now is the parties and likewise the jurors of the county of Middlesex chosen by the consent of the parties came, who say upon their oath that the aforesaid Thomas, being required by him the said Master Robert came at the day of the plea ready to assist the same Robert in counsel and aid; and he assisted until the same Thomas found falsity in the aforesaid writing, and that this Thomas ceased to pursue further the defence of that cause on account of that falsity etc. Therefore it is awarded that the aforesaid Thomas recover his arrears of twelve marks of the period before the writ was purchased, and of six marks for the period when the writ was pending, and twenty shillings according to the statute [1] because he had not his warrant concerning the lord king's service of which the same Robert caused himself to be essoined on the quindene of St. Martin last past. And likewise his damages which are taxed at sixty shillings according to the discretion of the justices etc. And let Robert be in mercy.

Damages: All to the clerks; and likewise twenty shillings by the statute, etc. because he had not his warrant concerning the lord king's service.

[1] Statute of Gloucester, 6 Edw. I. c. 8.

III.

PARTICULARS OF THE QUIRES AND FOLIOS OF THE MANUSCRIPTS DESIGNATED *Z* AND *ZZ* IN THIS VOLUME.

Z.

Hale MS. No. 137 (2) in the Library at Lincoln's Inn.
34 × 23 centimetres.

This manuscript contains 434 folios which have been recently numbered in pencil. As explained in the Introduction to Vol. VI. of this Series it consists of two parts of which the first contains the reports of 8 Edw. III. (occupying four folios) and an Index or Kalendar (occupying thirty-six folios) of the reports in the second part.

The four folios on which the reports of 8 Edw. III. occur were formerly unnumbered; but there is an ancient numeration of the next thirty-six folios from 1 to 37, one number in the foliation having been omitted carelessly. There is also an ancient numeration of the folios of the second part of the manuscript beginning with folio 43 (modern) marked 'foleum primum' and ending with 434 (modern) marked 405 (Arabic), the first 222 of these folios being marked in Roman numbers and the remainder in Arabic figures. Thirteen numbers of the ancient numeration are missing. They were formerly numbered 192–194; 202–206; 349 and 350, 377, 403 and 404, and should follow 233, 240, 382, 408 and 433 of the modern foliation. Some of these may have been blank folios which were removed for use elsewhere; but as the last sentence on folio 191 (old) is unfinished, it is probable that one or more of folios 192–194 (old) have been detached and lost. On the other hand, the omission of the numbers 377, 403 and 404 appears to be due to careless numeration.

The following is the collation:

First part—

1, 2 (*detached flyleaves*), 3—10 / 6	11—22 / 16	23—34 / 28	35—38 / 36	39—42 / 40	

Second part—

43—50 / 46	51—58 / 54	59, 60	61—68 / 64	69—80 / 74	81—92 / 86
93—104 / 98	105—116 / 110	117—128 / 122	129—140 / 134	141—152 / 146	153—164 / 158
165—176 / 170	177—184 / 180	185—200 / 192	201—212 / 206	213—224 / 218	225—233 / 230
234—238 / 238	239, 240	241—252 / 246	253—264 / 258	265—276 / 270	277—288 / 282
289—300 / 295	301—312 / 306	313—324 / 318	325—336 / 330	337—348 / 342	349—360 / 354
361—372 / 366	373—382 / 378	383—394 / 388	395—406 / 400	407—418 / 412	419—430 / 424

431, 432, 433, 434 (*detached*).

The conjugates of 225, 226 and 227 have been cut away.

The conjugates of 234—238 appear to have been cut away.

Folios 290 and 291 form a gathering within the quire 289—300.

The conjugate of 289 is 300, and that of 292 is 299.

ZZ.

Harleian MS. 739 at the British Museum.
32·5 × 23 centimetres.

This manuscript contains 329 folios, of which a blank folio between folios 6 and 7 is now numbered 6*. The manuscript is divided into two parts. The first consists of folios 1 to 41, and the second of folios 42 to 328. In the first part each quire is specially designated on its first folio thus, 'i^{us} quaternus,' 'ij^{us} quaternus,' etc., but in the second part each quire bears a Roman ordinal number without the word 'quaternus,' thus: i^{us}, ij^{us}, etc.

The following is the collation:

First part—

1—6*	7—18	19—30	31—38	39—41
4	12	24	36	41

Second part—

42—53	54—65	66—77	78—89	90—101	102—113
47	59	71	83	95	107
114—125	126—137	138—149	150—161	162—169	170—181
119	131	143	155	165	175
182—193	194—205	206—217	218—229	230—241	242—253
187	199	211	223	235	247
254—265	266—277	278—289	290—301	302—304	305—316
259	271	283	295	304	310
317—328					
322					

1—6*. The conjugate of 2 has been cut away, and 6* seems to be the conjugate of 1.

31—38. The conjugates of 31, 32, 33 and 34 have been cut away.

39—41, 302—304. The conjugates of these folios have all been cut away.

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104	Un Jon South et Johanne sa feme	*
104	Nota qe un bref de desceite	164
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105	Un home port son breue de Formedon	72
105	Jon Randolf porta son breue de Dette	19
106	Un home port son breue Dentre foundu	55
106	Nota qe celui qe fuist prie en aide	56
106	Un Adam port son breue de Formedon	67
107	Levesque Dexcestre porta son breue de Garde	141
107	Isabelle donna certeinz tenemenz	60
107	Un feme port breue de Dowere assigne	29
108	William les fiz Piers etc. porta le *cui in uita*	39
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109	Un Alice port son breue de Dower	33
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110	Un Will' e Johane sa feme porterent	85
110	Labbe de Abyngdon porta son *replegiari*	103
111	Jon de Podcote porta le *quare impedit*	16
113	Un Adam porta son breue de droit	130
113	Thomas de Valentin porta son breue	82
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* See vol. vi. p. 157.

† See vol. iv. p. 147.

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30. Portseye *v.* Halstede 1

B. granted certain lands, some of which he held of the king as of the castle of Porchester, to the plaintiffs for their lives at an annual rent. Afterwards Edward I assigned to Queen Margaret in dower the castle of Porchester with the services belonging to the castle. On the death of B. Edward II granted the wardship of B.'s heir to the defendant who avowed for the rent in arrear. The plaintiffs replied that the rent for which the defendant avowed with the other services ought to belong to the queen; and that the defendant could not avow by reason of the wardship. To this the defendant answered that if the plaintiffs rendered the services to the castle, they rendered them in the name of the heir, and that the rent was not a rent service but a farm due to B.'s heir. The reserved judgment of the Court is not reported; but the record shows that it was in favour of the plaintiffs as regards this rent.

31. Okholt *v.* le Fevre 6

A defendant in replevin avowed upon the plaintiff as upon his very tenant for rent in arrear. She replied that three joint tenants enfeoffed her ancestor to hold of them and their heirs rendering to each of the three and his heirs a third part of the rent, and that the avowant was entitled to one third part only of the rent. The avowant then showed his title, and wished to aver that he was seised of the rent in its entirety. To this the plaintiff replied that she could not be a party to this averment without a parcener of whom she prayed aid. The Court seems to have been of the opinion that she could not have aid as she had by her reply admitted that she held solely; but the case was adjourned till the next term.

32. Trenchard *v.* Trenchard . . 10

A defendant in replevin wished to avow for one bull and eighteen sheep damage feasant, though the plaintiff complained of the wrongful detention of the bull only. He was compelled to avow for the bull only.

33. Divers Notes 11

(*a*) Refusal of an averment that a vouchee to warranty had assets on the day of the purchase of the writ.

(*b*) Refusal to receive a voucher of 'the services of two knight's fees,' instead of 'two knight's fees,' simply.

(*c*) Non-obligation of a tenant in tail after possibility of issue extinct to attorn.

(*d*) The reviver of an appeal of felony.

(*e*) Render of dower by leave of the Court where a writ of cosinage was pending against the tenant.

TRINITY TERM, 4 EDWARD II.

1. Sagor *v.* **atte Welle . . . 13**

A writ of ael was brought against a tenant who pleaded that his father entered after the death of the ancestor and died seised. The demandant replied that this entry was not immediately after the death of the ancestor. This answer was not allowed; and the demandant then replied that the tenant's father was a bastard. The Court would not allow him to bastardize the tenant's father, who was alleged to have been seised twenty years or more, and to have died seised. The demandant was nonsuited.

2. Bradden *v.* **Hulcote . . . 16**

A man brought a *quare impedit* against a disturbant who brought a writ of last presentation against him to recover the same presentation. Both actions were brought into Court on the same day. The assize was called and the plaintiff counted of the last presentation made by his father, and of four previous presentations made by him in succession. To this the defendant answered that his ancestor was seised of the advowson as of fee and right and had presented, and that the right of presenting had descended to him, and as regards the last presentation made by the plaintiff's father he said that his own father was within age when it was made. The Court compelled him to answer all the presentations by the plaintiff's father. Issue however was joined on the infancy of the defendant's father at the time of the last presentation by the plaintiff's father.

There is a close resemblance between this case and *Malvern* v. *Vernon* (vol. iv. p. 51) which was heard three terms earlier.

3. Randolf *v.* **the abbot of Hayles . 19**

A writ of debt was brought against an abbot to recover the price of eleven sacks of wool which one of his monks had purchased for the use of the monastery. The abbot wished to repudiate the act of his monk, and to aver that he never purchased the wool; but he was not permitted to do so. He then offered to wager his law that he owed nothing to the plaintiff; but the law was not wagered, and the case seems to have been settled.

4. De la Chaumbre *v.* **The Bishop of London 22**

A writ of debt was brought against three executors. The defendant replied that the testator appointed another executor who died and appointed five executors who were not named in the writ and asked judgment of the writ. It appears that two only of these five persons were appointed excutors and that they never administered their testator's estate; but that administration was delivered to the other three persons, whom the defendant described as executors. The writ was awarded good.

5. Upton *v.* **Milton 26**

A plaintiff in debt denied an acquittance which the defendant put forward. An inquest was joined but on the day when it was to be taken the defendant failed to appear. The plaintiff recovered his demand and damages.

6. Andrew *v.* **Martin . . . 27**

A plaintiff sued in debt for arrears of rent reserved on a lease for a term of years to him and his heirs; and put forward an indenture witnessing the lease and the 'payment' of the rent (by which the agreement to pay seems to have been meant). The defendant admitted the deed but wished to aver that nothing was in arrear. The plaintiff claimed that the defendant ought to produce an acquittance. No judgment is recorded in this case.

7. Boyvill *v.* **Boyvill 29**

A woman brought a writ of dower against a tenant who made default after default. A lessee for a term of

years alleged collusion and prayed for an inquest under chapter xi of the Statute of Gloucester. This was awarded and judgment was delayed accordingly. It was decided in this case that chapter xi of the Statute applied not only to London, which is expressly mentioned therein, but also by equity elsewhere.

8. Rus *v.* **the Earl of Gloucester . 33**

A woman brought a writ of dower against the guardian of an heir in respect of lands which had been granted to her husband and his first wife and the heirs of their bodies. From the reports of an earlier hearing in Easter term (vol. vi. pp. 161–167) it appears that the words ' and their heirs ' were inserted in the charter after the words ' the heirs of their bodies ' and that there was a further limitation to the husband and his heirs if he survived his wife; and then if the husband and wife died without an heir of their bodies the tenements were to revert to the donor and his heirs. The final limitation is recited in the record (see vol. vi. p. 167), which however says nothing of the previous limitation to the husband if he survived the wife, or of the additional words ' and their heirs ' after the limitation to the husband and wife and the heirs of their bodies.

This case was first heard in Easter term 4 Edward II (when it was recorded upon the plea rolls). There was a further hearing in Trinity term, to which the report in this volume relates; and the case was again adjourned to Michaelmas term 5 Edward II when the widow was non-suited. A report in *D* which appears among the Hilary cases of 5 Edward II appears to be misplaced and to relate to the final hearing in Michaelmas term.

9. Fenne *v.* **Wynstan . . . 34**

A writ of entry at common law was brought by the assignees of a remainder expectant on the death of a tenant for life who with her second husband had demised lands to the tenant in the action. The tenant after unsuccessfully excepting to the writ on the ground of an alleged inconsistency in its wording demanded a view. The demandants objected that they had previously brought a writ against the same tenant and after a view he had abated their writ. The demand for a view was abandoned and the tenant then vouched the second husband to warranty, who warranted and then said that as the tenant for life had not attorned to the demandants they could claim nothing by the assignment of the remainder. Issue was joined on the attornment. The tenant to the action was a younger son of the tenant for life who held under a grant to her first husband and herself and the husband's heirs. The assignment of the remainder was made by the elder son and heir.

10. Cretynge *v.* **Wynthorp . . . 37**

A writ of entry *ad terminum*. The demandant put forward a writing witnessing the lease, to which the tenant replied that the demandant had given the land in demand by deed to a lessee in fee simple. As the tenant was neither a party to nor privy to the deed and showed no assignment he was not allowed to use it as a bar to the action. The tenant then denied that the demandant had demised for a term, but alleged that he had demised in fee; and on this issue was joined.

11. Bydyke *v.* **the prioress of Kilburn . 39**

A son brought a *cui in uita* on the seisin of his mother against a prioress, who came and said that her predecessor had entered on the tenements in demand, not by a lease made by the husband but by a judgment on a writ of *cessauit* brought against him and his wife. In these proceedings the husband made default after default and seisin was awarded to the prioress, subject to an inquest finding that there had been no collusion under the Statute of Westminster II. The inquest had found that there had been no collusion, and seisin

had then been awarded to the prioress. The demandant in the present case denied that the husband could bar his wife of her inheritance by a default on a *cessauit*, and claimed that under the Statute of Westminster II the son was entitled to recover the lands which his mother had lost through the default of her husband. The Chief Justice appears to have thought that the recovery under the *cessauit* was a bar to this action, but reserved judgment, and advised a settlement. The judgment of the Court is not entered on the roll of this term.

12. Guldeford *v.* **Selyde . . . 47**

A writ of entry *cui ante diuorcium* was brought against a woman to recover tenements in Shaftesbury. She replied that the tenements were devised to her for life and prayed aid of a husband and wife to whom and to the heirs of the body of the wife the tenements had been devised in remainder. The husband and wife came into Court but neither before nor after joining in answering were they allowed to make an exception to the writ. They then pleaded that the demandant's father had enfeoffed the devisor whose assigns they were and bound himself to warranty. An issue of *non est factum* was joined.

13. Gascelyn *v.* **Rivere . . . 50**

This is a further report of a case printed in the preceding volume (vi. p. 49). A *cui in uita* was brought by a woman and her second husband to recover lands which her brother had given to her and her first husband and the heirs of their bodies. The first husband alienated the lands to her brother (the donor) who then granted them to the tenant and bound himself and his heirs to warranty. In Hilary term the tenant, after unsuccessfully excepting to the writ had, had obtained view, and the case had been adjourned to the present term. The tenant then put forward the deed of alienation by her brother, and claimed that she as heir of his blood was bound by his deed to warrant the lands and was therefore barred from her action. The demandant claimed that the gift was made to her and her first husband in tail, and that the deed would not extinguish her action as she had no assets by descent. There was no decision in this case in Trinity term and it appears to have been adjourned to Michaelmas term 5 Edward II when it was again adjourned till the following Easter. The record occurs among the cases of Michaelmas 5 Edward II, and will be printed in the next volume.

14. Baynard *v.* **Peverel . . . 55**

A writ of entry *sur disseisin* was brought against a man and his wife to recover certain tenements and against another man and his wife to recover others. The writ said 'into which the said J. and A. (the two wives) have not entry.' One of the tenants objected that the writ was bad, because it supposed that the husband found his wife seised. The objection was overruled.

15. Crouper *v.* **Absolon . . . 57**

A writ of forfeiture of marriage was brought by the lessee of a wardship against the ward, who replied that he entered on the lands when of full age and not by intrusion, and that his father held a messuage of another lord by knight's service with priority of feoffment to the lessor's feoffment. The plaintiff wished to aver seisin of the wardship and tender of a marriage; but the Court held that it was for the defendant to show that the marriage did not belong to the plaintiff, and issue was joined on the priority of feoffment.

16. Montfort *v.* **Tregoz . . . 59**

A writ of formedon in the descender was held good in which the writ stated that the land ought, after the death of R. and P. his wife, and W. the son and heir of R. and P. and X. the brother and heir of W., by the form of the gift to descend to the demandant as brother and

heir of X. It was held that the demandant need be made privy to him only who last attained an estate, and not to the donee in tail.

17. Colby *v.* **Spenser** 60

The tenant in answer to a writ of formedon in the descender brought by the son and heir of a female donee in tail said that the donee married and her husband alienated after the birth of the demandant and before the Statute *De Donis* and bound himself and his heirs to warranty and was therefore barred. The demandant asked judgment whether the tenant could bar him by an alienation made during the coverture without fine, but was driven by the Court to say that he had no assets by descent. On this issue was joined.

18. Northmimmes *v.* **Castel** . . 63

A formedon in descender was brought against a widow who made default after default. A man intervened and said that she held for her life of his inheritance, and that the tenements had been granted by a fine (subject to her life interest therein) to his uncle and his wife and the heirs of the uncle. The fact that the wife was still living was held to be no objection to the receipt of the intervener. The demandant also objected that a writ had previously been brought against the tenant in this action, and aid was then granted to her of the intervener's uncle, who made default and was severed. The default and severance of his ancestor was held to be no objection to the receipt of the intervener.

The case is reported on the question of the receipt of the intervener. The record shows that the intervener pleaded that the demandant's ancestor alienated before the Statute *De Donis* and issue was joined on the date of the alienation. In Easter term 6 Edw. II a verdict was given at Westminster in favour of the demandant.

19. Le Pestur *v.* **Ry** . . . 67

A writ of formedon in reverter was brought against a tenant and his wife who asked what specialty the demandant could show of the gift in tail. When the demandant offered to aver the gift the tenants put forward a charter, by which the donor of the estate tail granted the tenements in fee simple to the alleged donee in tail; and when the demandant replied that the tenants could not be parties to try this charter, as they were neither party nor privy to it, they produced a deed of assignment to themselves. An averment by the demandant of the gift in tail was refused and an issue of *non est factum* with regard to the gift in fee was joined.

20. Anon. 72

A tenant against whom a writ of formedon in the reverter had been brought vouched an infant by the deed of his father. The demandant counter-pleaded the voucher, and said that the father was never so seised after the seisin of the demandant's ancestor, on whose seisin he had counted, that he could make an estate to the tenant or his ancestor. The demandant was driven to reply to the voucher by the tenant, that neither the vouchee nor *any of* his ancestors were ever seised either in demesne or service after the seisin *of the donor* through whom the demandant took his title. On this issue was joined.

21. Delegold *v.* **Calvele** . 75

A writ of mesne was brought by a widow for acquittance of homage and fealty. The mesne said that the widow held in dower of the inheritance of her daughter against whom she could claim acquittance, and that this daughter was the mesne's tenant. The plaintiff replied that her husband held the tenements of the mesne in fee simple, and enfeoffed R. D. to hold of the chief lord; that R. D. assigned the tenements to her as dower, and afterwards when she was seised, released them to her in fee, and

that she had tendered homage and fealty to the mesne, who had refused to receive them. The mesne replied that he was seised of the homage and fealty of the daughter and that the plaintiff was not his tenant. On this the plaintiff claimed that tender of services took the place of seisin and was a sufficient ground for acquittance of like services demanded by a superior lord. Judgment was reserved.

22. Maunsel *v.* Kaylie . . . 79

A writ of mesne was brought for an acquittance of homage fealty and scutage. The demandant showed no specialty, but alleged that the mesne's grandmother had enfeoffed the demandant's mother to hold of her and her heirs and had bound herself and her heirs to acquittance; and she and her heirs had always hitherto acquitted his mother and himself. The mesne then said that the tenements were alienated to the plaintiff's mother by the husband of his grandmother during coverture and that an action availed him to recover them. To this the plaintiff replied that the grandmother had alienated them while she was sole. Issue was joined on this. The verdict of the jury was given at York in September 10 Edward II in favour of the demandant and damages of ten pounds were awarded to him.

23. Walcote *v.* the abbot of Pershore 82

A writ of mesne was brought against an abbot for acquittance of scutage. The tenant claimed that the mesne was seised of his services and that his predecessors had been so seised and had acquitted the tenant and his ancestor from time immemorial. The mesne said that the tenant held the land where the distress was made immediately of the chief lord, and that with respect to that land he was not mesne between them. To this the tenant replied that this land was parcel of the land which he held of the mesne; but he was made to add 'and was not of the fee of the chief lord.' Issue was joined on this.

24. Bule *v.* Baker 85

The exception to a writ of *nuper obiit* that the ancestor on whose seisin the writ is brought was not the last person of the same blood seised is not complete without an allegation that the person subsequently seised died seised.

25. Carpenter *v.* Carpenter . . 89

On a writ of *nuper obiit* brought by two out of five sisters and a third who was non-suited the demandants were driven by the court to count of 'two parts of five parts' instead of 'two fifth parts of a carucate of land.' In this case issue was joined on the seisin of the common ancestor and in Hilary term 6 Edward II a jury at Westminster found that he did not die seised.

26. Stanton *v.* the prior of Monmouth 90

On a writ of *quare impedit* the plaintiff counted of his great-grandfather's seisin of the manor to which the advowson pertained and a presentation by him of one Philip. The disturbant replied that one of his predecessors had presented the last clerk, and other predecessors had presented three other clerks in succession before him. The plaintiff was driven by the court to answer each of the four presentations; but after he had done so the disturbant wished to waive his first answer and resort to another. He was allowed to do so, and said that the plaintiff's great-grandfather never presented the said Philip, and that Philip was not admitted by the bishop; and on this issue was joined. In Michaelmas term 5 Edward II a jury found in favour of the plaintiff who recovered the presentation and five pounds as damages.

27. Rex *v.* Hothwait 96

The king brought a *quare impedit* and counted that the countess of A. had presented three times to the vacant church, that a fine was afterwards levied by which certain other parties and the countess became entitled to present alternately and successively; and that after a presentation of one R. of M. by

one of the other parties, the countess had granted certain rent and the advowson to the king who by virtue of the grant now claimed the right to present in the turn of the countess. The defendant tendered the exception that the king showed no specialty of the purchase from the countess. He was driven, however, to answer her presentations and replied that his ancestor being seised of the manor to which the advowson pertained had presented his clerk to the church, and afterwards when it had been agreed between that ancestor's two granddaughters and coheiresses that they should present alternately the husband of one of the granddaughters as tenant by the courtesy (and not under the fine) had presented the said R. of M.; and that it was now the turn of himself as grandson and heir of the other parcener to present by virtue of the agreement. As regards the three presentations made by the countess he said that the last of the three was made when he was within age and in the wardship of the countess; that the next preceding one was made by his grandfather, who was tenant by the courtesy while his father was within age; and that the first of the three clerks alleged to have been presented by the countess was not instituted on her presentation. A day was given to the parties in the following term.

The king then stated that the defendant's father had brought a *quare impedit* against the countess, and had been non-suited, so that his father's right to the advowson had been extinguished. The defendant once again pleaded the exception that the king had shown no specialty; but his right to resort to this exception was contested by the king's counsel. He was however allowed to resort to it on his showing by the record of the Court that it was saved to him when he was driven by the Court to answer the presentations of the countess.

In the meantime judgment was given against the defendant in an action brought against him by another plaintiff to recover the same advowson, and judgment was given thereon in favour of this plaintiff. The record of the present case was then brought into the King's Bench for consideration and the arguments in that court are reported in Hilary term 5 Edward II. (vol. vi. p. 130).

28. The abbot of Abingdon *v.* Bysshop 103

Certain tenants avowed upon their lord for damage feasant on their common with beasts coming from vills which had no intercommonage there. The lord claimed that the place where the beasts were taken, and over which the avowants had rights of common only, was his own soil and that it was lawful for him to pasture it with his own beasts coming from any place whatsoever or to agist it with the beasts of others. To this the tenants replied that the lord had never pastured the common until his predecessors purchased from some of his tenants messuages to which common was appurtenant and since then the lord and his predecessors had been seised of commoning there with his beasts levant and couchant in those messuages and with none others. The lord answered that his predecessors were seised of pasturing in the common both before and after their purchases. On this issue was joined.

29. Compton *v.* Haulay . . . 113

An avowry for fealty was made upon one M. as very tenant. The plaintiff replied that he himself held of the avowant the tenements for which fealty was demanded; and that the avowant was seised of his services. He asked judgment whether the avowry could be made upon another than him. The avowant could not deny that the plaintiff held other lands of her, but denied that he was her tenant of the tenements for which fealty was demanded. The plaintiff was driven to show how he became tenant; and issue was joined on the attornment of M. to the father of the plaintiff, who afterwards purchased the tenements from M. to hold of the ancestress of the avowant.

30. Mabille *v.* the Bishop of Lincoln . 117

Three persons brought three several writs of replevin against a bishop who avowed because the men of a town and manor of which he was lord refused to choose a reeve in accordance with a custom of which he and his predecessors had been seised from time immemorial. Two of the plaintiffs replied to the avowry by a denial that his predecessors had been seised of the custom from time immemorial; and issue was joined on this. The third plaintiff put forward a charter to the men of the town granted by a predecessor of the bishop which this plaintiff claimed was in discharge of the custom and asked judgment whether the bishop could demand the custom. The bishop denied that the charter had extinguished the custom, and again offered to aver that he and his predecessors had been seised thereof from time immemorial. This plaintiff refused to accept the averment, and asked judgment on the charter. Thus there might have been two opposite judgments in the same case. A day was given to the parties in Michaelmas term as the Court wished to be advised whether the averment should be accepted without the commonalty of the town; and at the day given in that term the sheriff was ordered to summon the commonalty to be in court in Hilary term to sue with the other plaintiffs if they thought fit. In Hilary term the commonalty was essoined, and a day in Easter term was given to them and the parties. At the day given the commonalty failed to come, and the plaintiffs were ordered to answer without them in Trinity term when the jury found in favour of the bishop on the issue which had been joined between him and two of the plaintiffs; the third plaintiff who had refused to accept a similar averment failed to appear, and judgment was given for the bishop.

31. Theyn *v.* Grendale . . . 130

A writ of right was brought in a court baron against two tenants severally. One of them, who held by the courtesy, procured the removal of the cause into the King's court, on the ground that he had prayed aid of the reversioner, who was found by the bailiff to have no land in the jurisdiction on which he could be summoned. An objection by the other tenant that the *recordari* said 'Record the cause,' and not 'record the causes,' was overruled. A further objection that the reason for the removal applied to one tenant only was also overruled. It was then objected that the reason for removal was bad on the ground that the person who had not been summoned ought to have been summoned on the land in demand. The court decided that this tenant must answer. The other tenant then asked for and was allowed view of the tenements; and a day was given to the parties in the following term.

32. The Prior of Lenton *v.* Shaldeford . 134

A prior brought a writ of trespass in the King's Bench under Statute of Marlborough c. 28 for taking and carrying away the goods and chattels of the house and church of the prior, namely, forty lambs and wool. Four exceptions in succession were made to the writ, and were disallowed. One of these overruled exceptions was that the prior in whose time the goods were carried away was still living whereas the writ was given by the Statute to successors after the death of their predecessors. It is suggested in the Introduction to this volume that this may be the case of the prior of Lanthony (so called in error) mentioned by Selden in an important passage in his *Dissertatio ad Fletam*. Nothing is said in the record concerning these four exceptions and issue was joined on the taking in accordance with the count.

33. Boydyn *v.* Brun 136

A writ of trespass was brought against several persons for pulling down a wall. Some of them avowed by reason of an award of a court leet upon a presentment of the tithingmen and others

of the leet that the wall had been raised on the highway, and that they with the tithingmen and others pulled it down accordingly. The plaintiff, who had not been brought before the court leet by summons or attachment, objected that the avowry alleged no authority for the defendants' action. He denied that they could excuse themselves in this way, and tendered an averment that the soil was outside the King's highway. The defendants waived the avowry and accepted the averment. The other defendants denied that they had committed any trespass and issue was also joined on this. In Hilary term 6 Edward II a jury in the Common Bench found in favour of the plaintiff who recovered ten pounds as damages.

34. Waleys *v.* Walton . . . 139

A *iurata utrum* was brought by a parson on the seisin of his predecessor in the reign of Henry III to recover a messuage and a virgate of land. As regards the messuage the tenant denied that the parson held it in frank almoign; and as regards the virgate he said that this predecessor alienated in the time of Henry II, and he produced, in bar of the action, charters of the predecessor, the patron and the diocesan in support of his statement. The parson denied that the patron named ever had any right in the patronage, and asked for a jury on that point. The Court ordered that a jury should be taken on whether the messuage was frank almoign and whether the predecessor ever was patron of the church or had any right in the patronage.

35. The Bishop of Exeter *v.* Taillur . 141

A writ of wardship of lands was brought against a husband and wife, who claimed frank tenement. The demandant replied that they held under a false feoffment, and they were compelled by the Court to produce the charter by which they claimed. The charter showed that the tenements were granted to the tenants and the heirs of their bodies for a term of eight years at the rent of a rose a year, and at the expiration of the term at the rent of ten pounds a year. The demandant alleged that this charter was granted as a security for the term, and that the feoffment was a feigned feoffment at a rent exceeding the value of the land made for the purpose of depriving the demandant of his wardship. The tenants replied that it was made in good faith, and on this issue was joined. In the spring of 14 Edward II, nearly ten years afterwards, a jury taken at Launceston gave a verdict in favour of the demandant who recovered the wardship with damages.

36. Dyne *v.* Caneun . . . 148

A writ of ravishment of ward containing the words *quare ui et armis* was challenged because this was not in accordance with the Statute of Westminster II. c. 35. The writ was held good. The defendant then said that the father held in socage of another lord, and that the heir was in wardship of his wife as next friend to whom the inheritance could not descend, and he denied that the father held in knight service of the plaintiff, as he claimed. Issue was joined on this.

37. Alet *v.* Nansladron . . . 150

Two sisters brought a writ of waste against a tenant for life by the demise of their father who wished to plead in bar of the action that the deed by which the tenements were granted to him gave him power to take his profit in the way that seemed best to him. This plea was disallowed, and he then denied that he had made waste. Issue was joined on this.

38. Special Cases 154

These are ten notes which occur in one manuscript only. They appear to be not abridged reports, but imaginary cases intended for discussion. They relate to various circumstances in which the assize of novel disseisin, and writs of

quod permittat, entry *sur disseisin*, wardship, entry *dum fuit infra etatem*, *nuper obiit* and ejectment are brought, or in which the owner of a rent charge or a chief lord distrains.

39. Short Cases and Miscellaneous Notes 155

(1) Inquest was joined on a writ of waste. On the return of the verdict the husband made default. The wife was received. See also (6) below.

(2) Entry against a husband and wife who had acquired the land in demand during coverture. The writ which said 'into which she had not entry save by etc.' was held to be good.

(3) A demandant was driven to answer a quitclaim put forward as a bar by a tenant who made default after default.

(4) An abridged report of *Alet* v. *Nansladron*. (See p. 150 above.)

(5) Issue was joined on the bastardy of the demandant's father on a writ of ael.

(6) Another version of (1) above.

(7) One of two parceners who were vouched to warranty made default. The grand *cape* issued to take lands to the value of the entirety of the demand.

(8) A brief report of *Montfort* v. *Tregoz*. (See p. 59 above.)

(9) A brief report of *Compton* v. *Haulay*. (See p. 113 above.)

(10) A brief report of *Clerbek* v. *Lincoln*. (See vol. vi. p. 97.)

(11) A writ of covenant comprised a rent of ten shillings, and the fourth part of a knight's fee only. A fine levied on this writ was allowed to pass the rent and the fourth part of the knight's fee together with the homage and services by which a tenant held of the conusor.

(12) A writ of entry brought against two joint tenants was abated on the death of one of them.

(13) This seems to be a note on *Northmimmes* v. *Castel*. (See p. 63 above.)

(14) A challenge to the grand assize must be made and tried before the four knights who choose the twelve; and no challenge can be received after the assize has been sent into the Bench.

(15) A writ of deceit was brought upon a *monstrauit de compoto*, alleging that the accountant had lands by which he could be distrained. The ninepence a year of rent, which he was found to have, was held to be insufficient to bring him to account for twenty pounds.

(16) On the return of the little *cape* the tenant put forward as a bar an undated quitclaim by the demandant who appears to have been allowed to aver that it was not made after the default. This seems to refer to the same case as (3) above.

(17) A tenant against whom a writ of dower was brought vouched the heir who said that he had no land in possession by descent from his father. The property claimed had been improved by buildings since the husband alienated it. The widow was allowed to recover no more than its value at the date of its alienation.

(18) A man bound himself in ten pounds to levy a fine of a messuage held in right of his wife who died before the appointed day. The obligee brought a writ of debt. Apparently the fine was not engrossed, and as the son could have recovered his mother's land if alienated by his father, it was awarded that the father lose his ten pounds and be amerced.

CASES FROM FITZHERBERT'S ABRIDGEMENT.

Most of these cases have been identified with reports in this and other volumes of our Year Book Series. The remainder are brief abstracts, of which no shorter particulars would be useful. A concordance of the cases and notes in this volume with the Abridgement will be found on p. 206.

PLEAS OF VARIOUS TERMS.

1. The Prior of St. John of Jerusalem *v.* Evreux 169

A writ of covenant was brought against a parson concerning the fruits of his church which he had demised to the plaintiffs for a term of years but which they had lost through his resignation. An objection to the jurisdiction of the Court was overruled on the ground that spiritualities are made temporalities by sale. After two other exceptions had been overruled issue was joined on the ouster of the plaintiffs by the resignation of the parson or other default by him.

2. Anon. 171

A woman leased a wood for the term of her life which she held in dower. The lessee committed waste and the reversioner recovered against him the place wasted and treble damages. The woman then brought a writ of covenant against the lessee. An objection that she herself could have brought a writ of waste was overruled on the ground that as a doweress she could not say, as that writ required, that the waste was to her disinheritance. The Court also held that the plaintiff was not bound to produce specialty in support of the covenant.

3. Anon. 173

A lease was made to a man for life and to his executors or assigns for a term of twenty years after his decease. The lessee made a will and appointed the demandants his executors, who brought a writ of covenant against the lessor as assigns, apparently because there was a devise to them, and because they could not have a writ as executors for they had not been seised. It was objected that they brought the writ as assigns and counted as executors: but there is no judgment in the report which is brief and rather obscure.

4. Exewyke *v.* Exewyke . . . 174

A tenant against whom a writ of right was brought put himself on the grand assize. The demandant alleged that the deforciant's father was the son of the ancestor through whom she claimed, and asked judgment whether the assize could be taken between privies in blood. It was held that it might be taken between privies in blood where one claimed by descent, the other by purchase.

5. Anon. 175

A man bound certain tenements to distress for rent arrear. In reply to an avowry by his creditor he said that he was not seised save jointly with his wife; and they were not seised when the tenements were charged. The avowant replied that the plaintiff was seised, for they were held of him in villainage. It appears to have been agreed that a man may bind the tenements of his wife for her life.

6. Mareschal *v.* Lovel . . . 176

A writ of forfeiture of marriage was brought against an heir, who without answering the allegation of tender and refusal of a marriage, pleaded that his father held lands of another lord and died in his homage; and that he had seized the body of the heir and sold the wardship and marriage. He asked judgment on the ground that an action lay against the vendor. The plaintiff was driven to answer this plea, and said that he was seised of the body of the heir till he was of full age. On this issue was joined. There are other reports of this case in vol. iv. p. 8, which have been used in constructing this note.

7. Cornwall *v.* Haccumbe . . 177

On a writ of right of ward the tenant vouched to warranty. The demandant wished to counterplead the warranty on the ground that the tenant was the first who entered upon the wardship after the death of the ancestor of the heir; but as the vouchee was present in court and ready to warrant, he was

received under Statute of Westminster I. c. 40. Issue was then joined on priority of feoffment.

8. The Warden of Merton *v.* Husé . 178

The warden brought a writ of right of ward and counted that the infant's father had died in his homage. The tenant replied that the father held other land of N. by knight service, that N. had granted to him the homage and services of the father, that the father had attorned to him, and that the father had held these lands of N. and his ancestors before he held the land, in respect of which the warden claimed, of the warden or his predecessors. On this issue was joined.

9. Anon. 180

One A. became the pledge for B. rendering an account. B. delivered to A. all his chattels to sell for fifty pounds, and swore that he would pay whatever sum A. could not raise by the sale of the chattels. A. sold the goods and brought a writ of debt against B. for a balance. B. excepted that A. had not counted that the oath had been taken, but was driven to abandon this exception and then said that the deed was made while he was in prison. On this issue was joined.

10. Anon. 180

A prior replied to an avowry for suit in arrear that he held the tenements in frank almoign of the lord of a manor who held them of the avowant by the same suit and that the avowant was seised thereof. Issue was joined on the seisin of the suit by the hand of the lord.

11. Notes 181

(*a*) On *quare eiecit infra terminum.*

(*b*) On a *cui in uita* where the widow was seised after the death of her husband.

(*c*) On the receipt of a tenant for life who was received and rendered to the demandant his demand.

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The remaining cases which have not been identified with any of our reports and notes are as follows :—

Anon. **183**
Formedon in descender. This appears to be a case heard in Michaelmas term 5 Edw. ii. See Old Edition, p. 150.

Anon. **187**
On a *cui in uita* the tenant pleaded non-tenure on the ground of a render in dower.

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(1) Tenancy in common.
(2) Claim to a liberty on the first day of an eyre.
(3) Dower against a guardian.
(4) False judgment.

Note **191**
(1) Admeasurement of pasture.

Note **192**
(2) The same.

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Anon. **194**
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p. 19 (right), note 1	*for* 18 Edw. I.	*read* 13 Edw. I.
p. 40 (right)	,, Mortmain	,, Westm. II. c. 30.
p. 60 (right), line 4	,, Bargham	,, Burpham.
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p. 135 (right), note 1	*delete* Probably . . . abate.	
p. 150 (left), line 12	*for* amite	,, amice.
p. 150 (left), lines 30 & 35 p. 152 (right), line 22 p. 153 (left and right), line 6	,, Nausladron	,, Nansladron.
p. 185 (left), note 2	,, 88	,, 85.
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